

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**CORRUPTION AND ECONOMIC CRIMES DIVISION**  
**AT ARUSHA**

**ECONOMIC CASE NO. 05 OF 2020**

**THE REPUBLIC**

*Versus*

- 1. SAIPI s/o BIRIKAA KERETO**
- 2. FRANK s/o NGATAIT LERUG**
- 3. JOSHUA s/o LUKAS DIA**
- 4. STEPHANO s/o NADA BURA @ CHARANGI**

**JUDGMENT**

The accused persons: Saipi Birikaa Kereto (first accused), Frank Ngatait Lerug (second accused), Joshua Lukas Dia (third accused) and Stephano Nada Bura @ Charangi (fourth accused) are indicted for unlawful possession of (being a first to eighth counts, inclusive for the first accused person) and unlawful dealing in government trophy (ninth count for the first and second accused persons and tenth count for third and fourth accused persons), contrary to section 86(1) and (2)(b) of the Wildlife Conservation Act, No. 5 of 2009 read together with paragraph 14 of the

First Schedule to, and sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act, Cap 200 R.E. 2002 as amended by sections 16(a) and 13(b) of the Written Laws (Miscellaneous Amendment) Act No. 3 of 2016.

It is alleged in the particulars of offence that, on 8.5.2018 at Enduleni village within Ngorongoro district in Arusha region, the first accused person above named was found in unlawful possession of government trophies to wit one piece of elephant tusks value Tsh 34,137,150/= (first count), one piece of rhinoceros horn valued Tsh 86,480,780 (second count), one piece of hippopotamus tusk valued Tsh 3,413,715/= (third count), two pieces of bushbuck horns valued Tsh 1,365,486/= (fourth count), three pieces of grant gazelle horns valued Tsh 2,048,229/= (fifth count), two pieces of Oryx horns valued Tsh 6,372,268/= (sixth count), one piece of eland horn valued Tsh 3,868,877/= (seventh count), three pieces of buffalo horns valued Tsh 8,648,078/= (eighth count) and he (first accused), second accused, third accused and fourth accused dealt in government trophies to wit one piece of rhinoceros horn valued Tsh 86,480,780 (ninth and eighth counts) the property of the government of the United Republic of Tanzania without a permit from the Director of Wildlife.

The first accused, second accused, third accused and fourth accused denied an information.

In this matter Mr. Felix Kwetukia learned State Attorney, Ms. Grace Madikenya learned State Attorney and Ms. Naomi Mollel learned State Attorney appeared for the republic; the first and second accused persons were represented by Mr. Daud Haraka learned Advocate; the third and fourth accused persons were represented by Mr. Silyvester Kahunduka learned Advocate.

A sole issue for determination is whether the prosecution has managed to prove an information to the required standard.

The only evidence which implicate the four accused persons to have committed the accusation levelled against them, is that they mentioned each other on a preliminary interview after arrest. It was explained by PW6 Cathbert Lemanya, that they procured information that one Joshua Lucas Dia (third accused) was in possession of rhinoceros's horn. That on 3/5/2018 they arrested the third accused at Serena Hotel, and took him to Ngorongoro Police for interrogation where he mentioned his co-staff Stephano Nada Bura (fourth accused). The fourth accused was arrested on 4/5/2018 at Karatu Junction and taken to Ngorongoro for interrogation. It

was stated by PW2 that, the fourth accused confessed to have paid a sum of Tsh 50,000 to one Frank Ngatait for rhinoceros horn. On 6/5/2018 they arrested Frank Ngatait (second accused) at Koloilo Village and took him to Ngorongoro Police in view of knowing his role in a business of rhinoceros horn. The second accused mentioned one Mepukori Birikaa (who nevertheless was not joined in this case). Mepukori Birikaa was arrested on 7/5/2018 at Esilalei and taken to Police Karatu for interrogation, where he mentioned Saip Birikaa (first accused) as the one in possession of rhinoceros horn. The first accused was arrested on 8/5/2028 at Esirwa, thereafter a search was conducted at his premises, where one elephant tusk, one rhinoceros horn, one tooth of hippopotamus, three horns of grant gazelle, two horns of oryx, two horns of bushbuck, one horn of eland and three horns of buffalo exhibit P2 collective, were seized via a certificate of seizure exhibit P3. This fact was also supported by PW2 DC Daniel.

As it turned out above, the alleged oral confessions were not extracted on the spot at the scene of arrest in respect of each accused person, rather were alleged to have been obtained through preliminary interviews done at Police Station of Ngorongoro in respect of the third, fourth, second accused (mentioned in preferential order of a chain of arrest). Only the first accused

who was the last in a breakage chain of arrest (because Mepukori Birikaa was spit out of prosecution), was alleged to have confessed at a scene of arrest at Esirwa, to have been in possession of one elephant tusk, as put by PW6 and PW2. PW2 added that, the first accused confessed that the elephant tusk in his possession he inherited from his deceased father. In **The State vs Phillip Placid**-Crim. No. 113 of 2003 [2004] TTCA 12 (10 November 2004), the Court of Appeal of Trinidad and Tobago made reference to Sharma C. J. in **Boodram v The State** (Unreported) Cr. App. No. 17 of 2003 who had this to say regarding oral confession, I quote,

*'There are many inherent dangers with which this kind of evidence (oral statements) is fraught. For instance, it is so easy to fabricate evidence of oral admissions against accused persons. Sometimes it may be done to 'gild the lily'.*

The Court of Appeal of Trinidad and Tobago went on to say, I quote,

*'Allegations that the police occasionally attributed false oral statements to accused persons have been made for years.*

*We would suggest that where the State's case depends substantially on oral admissions, that it would be advisable for the police officers investigating to make*

*contemporaneous notes of them which should be read to the accused and then ask him to sign them. It would be a matter of record and evidence whether he does so or not. If the note is disputed, copies could be made to the jury'*

In view of the above precaution and palpable danger, it is unsafe to rely on oral confession or statements alone to sustain conviction. As I have said above, in this matter the alleged interviews were not done at the scene of arrest, rather were done at a police station where the accused persons were sent for interrogation. Therefore, this raises doubt if those confessions were voluntarily made. As a matter of fact, this entail rejection of PW2 and PW6 evidence and of the subject oral confessions (statement).

It was the evidence of PW6 that a carcass of rhinoceros which PW6 heard that it was found at a jungle an area called Orieni, sometimes in March 2018, triggered or initiated investigation. On cross examination, PW6 stated that after long period it is when they obtained information regarding a horn of rhinoceros part of exhibit P2, which has no relationship with a killed rhinoceros at Orieni. This connote that an investigation pursued thereafter, trailed PW6 and PW2 to a wrong destination. This is because, government trophies horns and a tooth exhibit P2, its appearance does not

suggest that were fresh anymore, rather its appearance is worn out and old, which suggest that were obtained from long time ago. PW6 suggested that a carcass of a killed rhinoceros at a jungle Orieni area, assisted them to manage to impound trophies exhibit P2. But this argument seems to be superfluous, as according to the testimony of DW5 is that PW6 was familiar and aware that the late Birikaa Kereto was possessing trophies.

Be as it may, having faulted the evidence on oral confession, the fact that the first accused was intending to dispose of by way of selling a rhinoceros's horn which form part of exhibit P2, is unsupportive. No tangible evidence was presented to prove that the first accused was dealing or vending the alleged trophies in particular rhinoceros's horn.

On cross examination to DW1 (first accused), the learned State Attorney attempted to introduce an argument that trophies mentioned on a schedule or licence attached to exhibit P5 does not tally with the actual number of seized trophies exhibit P2, which are less compared to those mentioned in exhibit P5, where other trophies are completely missing.

However exhibit P5 belong to one Birikaa Kereto (deceased) who is the father of the first accused. On defence, the first accused (DW1) disowned

trophies exhibit P2 and a permit for trophies exhibit P5 on explanation that they belong to his deceased father Birikaa Kereto who used them for his traditional healing practices at a house cum store where they were seized. DW1 was supported by his step mother Nortian Birikaa (DW5). PW5 Fredrick Ambwene Ligate and PW7 DC Leodger (the later tendered a statement (exhibit P11) in respect of Freddy Manongi Principia Wildlife Officer at Ngorongoro Conservation Area Authority, in their reports exhibit P9 and P10 respectively, commented that a permit for possessing trophy exhibit P5 is not genuine, fake (also put by PW6), on explanation that is a mere letter which does not conform to Form 11 or written authority of the director of Wildlife; two, the officer/staff who signed it to wit one Joseph Ole Koromo had no mandate as was not a designated officer to issue permit and he signed on behalf of the Wildlife Officer at Ngorongoro instead of the Director for Wildlife; three, the law which establish Ngorongoro Conservation Area Authority is silent as to mandate to issue permit for possessing trophies. But when PW5 was cross examined by defence Counsel, stated that exhibit P5 had quoted and clarified/explained a previous permit which he (PW5) did not work on it. This answer suggest that investigation was partially or shoddily done by the prosecution.



In a letter or trophy permit ref. No. NCU/D/207/146 dated 29/11/2004 (exhibit P5), its contents, the author crafted, I quote,

*'KIBALI CHA NYARA (VIPUSA) NA.0018859 Ng'NHZ*

*Bwana Birikaa Kereto mwenye kibali cha vipusa kilichotajwa hapo juu, ni Mganga wa Jadi anayeishi ndani ya Hifadhi ya Ngorongoro.*

*Kibali hicho kilitolewa Mkoani Arusha kutokana na kibali cha awali Na. Ref. C/O Na 878559 cha 13/8/77 kilichotolewa na hifadhi ya Ngorongoro kabla ya idhini ya kutoa vibali kuhamishiwa Idara ya Wanyamapori Mkoani Arusha. Kwa bahati mbaya kibali hicho kimekwisha na kupotea.*

*Mamlaka ya Hifadhi Ngorongoro inatambua vibali vya Bwana Kereto kuwa ni halali isipokuwa kituo cha Arusha hakijapiga mhuri wake.'*

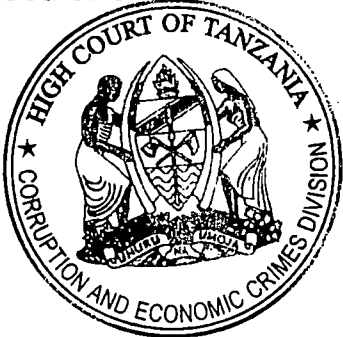
Exhibit P5 overleaf is attached with a licence for registration of trophies "vipusa" No. 0018859 Ng"/NH2/-, ref. C/N087859, which indicate issuing station is Arusha; date 4/8/1982; issued to Mr. Birikaa Kereto, reflect there was a previous permit issued at Ngorongoro on 13/8/1977. At the bottom it contains the following synopsis, I quote,

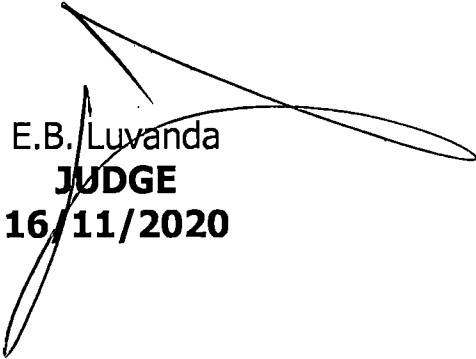
*'LESENI HII IMETOLEWA KWA AJILI YA UGANGA WAKE  
ULIOTOKA KWA BABA YAKE MZAZI, HIVYO BASI MKOA  
WA ARUSHA UMESHASAJILI TANZANIA BARA VIFAA  
ALIVYONAVYO SI ZA BIASHARA NI ZA UGANGA WA JADI  
ALIOZALIWA NAO'*

The prosecution did not inquire at Arusha the above mentioned licence for registration of trophies No. 0018859 Ng"/NH2/-, ref. C/N087859. Instead took the matter and rushed to Dodoma to the Director of Wildlife at the headquarter of Ministry of Natural Resources and Tourism, who was not the issuing authority for purpose of licence No. 0018859 Ng"/NH2/-, ref. C/N087859. Indeed, PW5 stated that the register for permit is at Morogoro which is a headquarter for that purpose and the store of these documents is at Dar es Salaam. Again the prosecution instead of investigating the legality of licence No. 0018859 Ng"/NH2/-, ref. C/N087859 (reflected overleaf of exhibit P5), in lieu thereof they dwelled on investigating a letter on the front page of exhibit P5.

In view of this loophole, it cannot be said that an information was proved on the required standard. Even an offence or counts levelled against the first accused person for unlawful possession of government trophies were not proved on the required standard.

Therefore, offences of unlawful possession of (being first to eighth counts, inclusive) and unlawful dealing in government trophy (ninth and tenth counts), contrary to section 86(1) and (2)(b) of the Wildlife Conservation Act, No. 5 of 2009 read together with paragraph 14 of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act, Cap 200 R.E. 2002 as amended by sections 16(a) and 13(b) of the Written Laws (Miscellaneous Amendment) Act No. 3 of 2016 are dismissed and all four accused persons are acquitted.



  
E.B. Luvanda  
**JUDGE**  
**16/11/2020**