

THE UNITED REPUBLIC OF TANZANIA
IN THE HIGH COURT OF TANZANIA
CORRUPTION AND ECONOMIC CRIMES DIVISION

AT ARUSHA

ECONOMIC CASE NO. 18 OF 2019

REPUBLIC

VERSUS

1. METWII S/O PUSINDAWA LASILASI

2. MAOYA S/O SINDORE KUMBUNI

3. KEREKU S/O JULIUS SINDILA

4. STEPHEN S/O MUSONDA SILUNGWE @ MCHUNGAJI

JUDGMENT

The accused persons Metwii s/o Pusindawa Lasilasi (first accused), Maoya s/o Sindore Kumbuni (second accused), Kerekuu s/o Julius Sindila (third accused), Stephen s/o Musonda Silungwe @ Mchungaji (fourth accused) are indicated for unlawful possession of government trophy 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) respectively of the Written Laws (Miscellaneous Amendment) Act No. 3 of 2016. In the particulars of offence, Metwii s/o Pusindawa Lasilasi (first accused), Maoya s/o Sindore Kumbuni (second accused), Kerekuu s/o Julius Sindila (third accused), Stephen s/o Musonda Silungwe @ Mchungaji (fourth accused) are accused that on 10.2.2018 at Olkaria village within Monduli District in Arusha region, were found in unlawful possession of government trophies to wit twenty (20) pieces of elephant tusks equivalent to five killed elephants each valued USD 15,000 all total valued USD 75,000 equivalent to Tsh 168,900,000/=, the property of the government of the United Republic of Tanzania. The first, second, third and fourth accused denied an information.

It was the testimony of Damas Paschal PW3 (game warden, Anti Poaching Unit Dar es Salaam) that on 8.2.2018 got information from a good civilian (informant) that there is a group of eight people vending government trophy (elephant tusks) at Nanja Monduli Arusha. On 9.2.2018 PW3 with his colleague one David Marwa PW4 (also game warden, Anti Poaching Unit Dar es Salaam) commenced a journey to Arusha. Meanwhile PW3 was communicating with the informant who was communicating with people who

had a luggage. They arrived at Arusha at 23.00 hours, where their informant told them the business will be done at midnight and directed them at Mtimmoja Nanja. They went there and saw one person waiting for them (who introduced as Mahoya), who told them a luggage was at Lokalia. They proceeded there leaded by that person who boarded a motor cycle (carried two people), up to a place with savannah grassland. While there, came other two people on a motor cycle, the one at a rear seat (later introduced as Metwii) enclasp a sack containing elephant tusks. The rest had introduced as Kerekuu and Mchungaji. Thereafter they opened a luggage, they saw it being tusks through motor vehicle lights illuminating thereat. Then tusks were loaded into PW3 car where Metwii and Mahoya boarded therein for purpose of looking for a place and tree to measure the weight of those tusks. Meanwhile Kerekuu and Mchungaji left to look for a tree. Thereafter Metwii (first accused) and Mahoya (second accused) were put under arrest. After arrest, a certificate of seizure (exhibit P5) was recorded in respect of twenty (20) pieces of elephant tusks containing into a sack (exhibit P3 collectively). Thereafter they took the suspects and elephant tusks to KDU Arusha, where PW3 handed over twenty pieces of elephant tusks into a sack to store keeper James Kugusa PW1 (game warden cum store keeper) via handing over

certificate exhibit P1. This version of evidence was supported by David Wilson Marwa PW4 (game warden, Anti Poaching Unit Dar es Salaam).

After receiving exhibit P3, PW1 labeled it by recording date of seizure on 10.2.2018, place of seizure at Mtimmoja, name of suspects, serial number 1 to 20 inclusive, Economic No. 17/2018, then preserved. On 12.2.2018 in the morning, PW1 handed over twenty pieces of elephant tusks exhibit P3 to Novatus Hilary PW2 (wildlife officer). PW2 conducted identification and valuation of the government trophy as per trophy valuation exhibit P4 and then handed over back to PW1 on the same date, via handing over certificate exhibit P2. PW1 preserved those twenty pieces of elephant tusks into a sack exhibit P3 until when he tendered them in court.

It was the testimony of Jonas Laki Fungo PW5 (police officer) that on 4.3.2018 at 15.26 hours, they managed to apprehend Kerekuu (third accused) inside a local brew hut at Nokanoka Ngorongoro. Stephano @ Mchungaji (fourth accused) was arrested by Haji Shaibu Msosa PW6 (game warden) on 15.3.2018 at Karatu.

On defence, Metwii Pusindawa Lasilasi DW1, stated to have been arrested on 8.2.2018 at about 11.00 hours by police officers at Olkaria Village Monduli

district for accusation of possessing a gun. They broke a padlock of his house, conducted a search and nothing was recovered. Thereafter he was taken to Anti Poaching Unit (KDU) Arusha, where he was kicked, fist, clubs and grabbed on a chest. On 20.2.2018 he was taken to court and charged with Economic Case No. 15 of 2018. He refuted allegations of transacting on elephant tusks.

Maoya Sindore Kumbuni (DW2) stated that he owed one Lomnyaki Mollel a debt of Tsh 800,000/= being a balance of purchase price in respect of a farm. On 4.2.2018 Lomnyaki Mollel phoned him a phone call asked him to come to Arusha to take his money. On 5.2.2018 DW2 travelled to Arusha, arrived at 17.00 hours where he was received by Lomnyaki Mollel who was in company of two people. On the way to Lomnyaki Mollel home, he was arrested by those three people including Lomnyaki Mollel, who beat and took him to police. On 20.2.2018 he was taken to court charged with case No. 15 of 2018. That he was not involved in case No. 15 of 2018 as he was not arrested in possession of government trophy.

Kerekuu Julius Sindila (DW3) stated that on 10.2.2018 he was at home with his family. On 4.3.2018 at 12.00 after Sunday worship, while grazing livestock at Nyokanyoka, occurred three people including one Dawi (game

warden) who arrested, handcuffed and took him to Ngorongoro. On 5.3.2018 he was taken to KDU Njiro Arusha where he was tortured and remanded. On 23.3.2018 he was taken to court and charged with case No. 15/2018 and joined Metwii and Maoya who were strange to him. That he never participated in government trophy in his life time and no one mentioned him.

Stephen Msonda Silungwe (DW4) stated that on 10.2.2018 he was at home with his wife. On 15.3.2018 at 16.00 hours he was arrested at his home and taken to Karatu police. On Friday at 15.00 hours he was taken to Arusha Njiro Police Post. On 26.3.2018 he was charged in court for possession of government trophy Economic Case No. 14/2018. That he never involved, transact or found in possession of government trophy. He asked the court to acquit him.

In this matter Ms. Adelaide Kassala learned Senior State Attorney and Ms. Penina Ngotea learned State Attorney appeared for the republic (prosecutor) and the first accused was under representation of Mr. Mahamadou Majura learned Advocate, Mr. Kapimpiti Mgalula learned Counsel appeared for the second accused, Mr. Yusuf Omari Mlekwa learned Advocate was for the third accused and Mr. John Lairumbe learned Counsel was advocating for the fourth accused.

It is to be noted that the deadline for closing submission was on 27.2.2020 and defence Counsel filed out of time on 28.2.2020. as such the same will not be considered. The prosecution closing submission which will be considered and referred in the course of making findings as the need will arise.

Issues for determination: first, whether the twenty pieces of elephant tusks were seized from the accused persons; secondly whether the chain of custody was properly maintained.

For the first issue, PW3 and PW4 put on evidence that they apprehended the first and second accused after the duo had boarded into a motor vehicle make Rav 4. This was after PW3 and PW4 had asked a tricky question, that owners of a luggage (elephant tusks) to board a motor vehicle as a lift to look for a place and tree to hang a weighing scale, in view of measuring a luggage of 20 pieces of elephant tusks contained into a sack. PW3 and PW4 put that a sack containing 20 pieces of elephant tusks was carried (enclasp) and brought by the first accused via a motor cycle, at a scene Nanja area. It was the explanation of PW3 and PW4 that in the course of effecting arrest, ensured commotion where the two accused were struggling to get out of motor vehicle, but were subdued and apprehended as aforesaid. These

consistence facts by PW3 and PW4, were not dented, neither discredited during cross examination. A defence by DW1 (first accused) that he was arrested at his home and DW2 (second accused) that he was arrested a short distance from Arusha bus stand by one Lomnyaki whom the second accused alleged owed a debt of Tsh 800,000/=, cannot negate a fact that they were arrested at a scene (Nanja) while dealing with elephant tusks, after they had fall into a trap and agreed to board into a motor vehicle (Rav 4) of game warden who had posed as potential purchasers of a luggage of twenty pieces of elephant tusks into a sack.

There were some inconsistence on part of prosecution witnesses. For one thing, PW3 put that Mahoya (second accused) is the one escorted them from Mtimmoja to Nanja (crime scene), while PW4 stated that they mate Mchungaji (fourth accused) and Kerekuu (third accused) at Mtimmoja who escorted them to Nanja (scene). But I take it as a minor discrepancy, which is ignored.

Secondly, PW3 stated that the third and fourth accused left at a scene and went to look for tree to measure elephant tusks, while PW4 said they were all going to look for a tree for hanging a weighing balance (accused and PW3, PW4 inclusive), where the first and second accused boarded into Rav

4 and the third and fourth accused took a lead by motorcycle. However, this cannot be taken as serious discrepancy, as at certain point during examination in chief PW3 stated that after a luggage was brought, they asked the accused to look for a place for measuring it and proposed to leave that place and look for a tree to measure weight. This version of evidence connotes that at first they all (accused and arresting officers) agreed to go away to look for a tree to assist them to measure a luggage, where the third and fourth accused take the lead by motorcycles. Therefore the same cannot be taken as serious contradiction.

This take me to a next limb of the first issue, as to whether the six pieces of elephant tusks were seized from the four accused persons. The evidence of PW3 and PW4 is clear that after a luggage was brought by the first accused and after they had confirmed it being twenty pieces of elephant tusks, they directed owners of it to board into a motor vehicle, for them to establish actual owners. This was after twenty pieces of elephant tusks contained into a sack were loaded into a motor vehicle Rav 4, where the first and second accused volunteered to board into a motor vehicle. Meanwhile the third and fourth accused were let to leave the scene escort free. To the wording of PW3, on cross examination explained that after the duo had boarded into a

motor vehicle, it clicked into his mind that the second accused was also the owner of elephant tusks. On further cross examination by defence Counsel, PW3 explained that they let the third and fourth accused go to look for a tree because they were not concerned. Indeed, the third and fourth accused did not sign a seizure certificate. Only the first and second accused who get trapped into a motor vehicle of PW3 and PW4 had signed a seizure certificate exhibit P5. It can be said therefore that the twenty pieces of elephant tusks into a sack exhibit P3 were seized from the first and second accused.

Therefore, the first issue is ruled in affirmative in respect of the first and second accused.

The second proposition, whether the chain of custody was properly maintained. It is in records, that after seizure of an exhibit of twenty (20) pieces of elephant tusks containing into a sack (exhibit P3 collectively), seized via a certificate of seizure (exhibit P5), were taken to KDU Arusha, where PW3 handed over twenty pieces of elephant tusks into a sack to store keeper James Kugusa PW1 (game warden cum store keeper) via handing over certificate exhibit P1. After receiving exhibit P3, PW1 labeled it by recording date of seizure on 10.2.2018, place of seizure at Mtimmoja, name of suspects, serial number 1 to 20 inclusive, Economic No. 17/2018, then

preserved. On 12.2.2018 in the morning PW1 handed over twenty pieces of elephant tusks exhibit P3 to Novatus Hilary PW2 (wildlife officer). PW2 conducted identification and valuation of the government trophy as per trophy valuation exhibit P4 and then handed over back to PW1 on the same date, via handing over certificate exhibit P2. PW1 preserved those twenty pieces of elephant tusks into a sack exhibit P3 until when he tendered in court.

It is to be noted that Economic No. 17/2018 alleged to have been labeled by PW1 into twenty pieces of elephant tusks and their packaging of sisal sack exhibit P3 collectively, attracted a query from defence that the said number was not a PI in respect of this matter at committal. According to defence, a PI subject for committal was 15/2018. Essentially the defence of all four accused was hinged on this fact. However, Economic No. 17/2018 was not the only mark labeled by PW1 into exhibit P3. It was the explanation of PW1 that immediately after receiving exhibit P3 he labeled date of seizure on 10.2.2018, place of seizure at Mtimmoja, name of suspects, serial number 1 to 20 inclusive. According to PW1 Economic No. 17/2018 was labeled thereafter he had procured from the Prosecutor, following indictment of the accused in court. More important arresting officers to wit PW3 and PW4,

were able to recognize the twenty pieces of elephant tusks into a sack as the same seized on the material night at the scene.

It can be said therefore that, a mere fact that PW1 had labeled a wrong PI number Economic No. 17/2018, cannot constitute tempering or breakage of chain of custody in respect of twenty pieces of elephant tusks into a sack exhibit P3 collectively. In **Issa Hassan Uki vs The Republic**, Criminal Appeal No. 129 of 2017, Court of Appeal at Mtwara (unreported), had this to say at pages 11 to 12, I quote in extenso,

*'In the instant case, the item under scrutiny are elephant tusks. We are of the considered view that elephant tusks cannot change hands easily and therefore not easy to temper with. In cases relating to chain of custody, it is important to distinguish items which change hands easily in which the principle stated in **Paulo Maduka** and followed in **Makoye Samwel @ Kashinje** and **Kashindye Bundala** would apply. In cases relating to items which cannot change hands easily and therefore not easy to temper with, the principle laid down in the above case can be relaxed'*

Finally, whether the act committed by the first and second accused person amounted to unlawful possession of government trophy. The penal provision

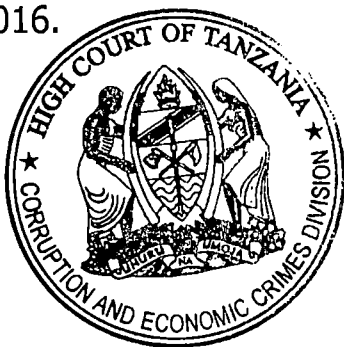
to wit section 86(1) of the Wildlife Conservation Act, No. 5 of 2009, provide that a person shall not be in possession of or otherwise deal in any government trophy. PW3 and PW4 explained that the first and second accused had no permit for possessing twenty pieces of elephant tusks exhibit P3. PW2 conducted identification and revealed the twenty pieces were elephant tusks as it is elephant alone with tusks of that size, tusks are upper incisor which become large and protrude outside a mouth, have shriger lines which are cross lines forming a shape of a diamond. That the twenty pieces of elephant tusks were connected formed nine tusks which are equal to five elephant valued USD 75,000 equivalent to Tsh 168,900,000/= as per trophy valuation exhibit P4.

In the premises, the first accused and second accused are taken to have been in unlawful possession of government trophy.

Having adumbrated as above, I rule that the prosecution has managed to prove an information leveled against the first accused and the second accused. The third accused and fourth accused are acquitted.

The first accused and second accused are convicted for unlawful possession of government trophy contrary to sections 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) respectively of the Written Laws (Miscellaneous Amendment) Act No. 3 of 2016.



E.B. Luvanda
Judge
28/2/2020

SENTENCE

The first and second accused are sentenced to either pay fine a sum of Tsh. 329,100,000/= or each to serve a term of twenty years imprisonment.

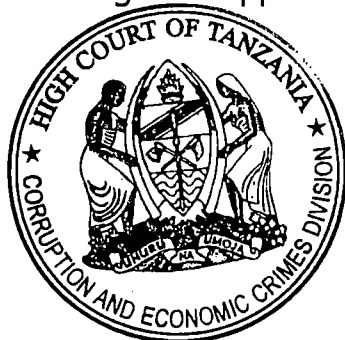
ORDER

An exhibit of elephant tusks is confiscated.



E.B. Luvanda
Judge
28/2/2020

Court: Right of appeal against conviction and sentence is there.



E.B. Luvanda
Judge
28/2/2020