

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

**AT ARUSHA - SUB REGISTRY**

**ECONOMIC CASE NO. 16 OF 2019**

**REPUBLIC**

**VERSUS**

**1. PETRO BURA TLEHHEMA**

**2. JULIUS LEKEYA SABORE**

**3. LEKENI MBARYO PELENGONG'O @ SAMWEL**

**4. LOSORUWA LETURA LOCHUMALI**

*4<sup>th</sup> and 11<sup>th</sup> May, 2020*

**JUDGMENT**

**BANZI, J.:**

Petro Bura Tlehhema, Julius Lekeya Sabore, Lekení Mbaryo Pelengong'o @ Samwel and Losoruwa Letura Lochumali, the first, second, third and fourth accused persons respectively, stand charged with two counts of unlawful hunting in a game controlled area and unlawful possession of government trophy contrary to sections 19 (1) (2) (a) and 86 (1) (2) (b) respectively, of the Wildlife Conservation Act, No. 5 of 2009 (the WCA) read together with paragraph 14 of the First Schedule to and sections 57 (1) and 60 (2) of the Economic and Organised Crime Control Act [Cap 200 R.E. 2002] (the EOCCA) as amended by sections 16 (a) and 13 (b) respectively of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016.

(PW4). Besides, they tendered six exhibits, which were all admitted, thus: Exhibit P1, handing over form between Simon Barnabas and James Kugusa; Exhibit P2, handing over form between James Kugusa and Chacha Manamba; Exhibit P3, two double-edged knives and one bow; Exhibit P4, Certificate of seizure; Exhibit P5, Certificate of Valuation of Trophy and Exhibit P6, Inventory form. On the other hand, during defence, the first accused person (DW1) and second accused person (DW2) testified under oath, while the third accused person (DW3) and the fourth accused person (DW4) testified on affirmation. DW3 also tendered the statement of PW4 which was admitted as Exhibit D1.

In the main, the body of evidence by the Prosecution presents a case that, on 8<sup>th</sup> August, 2018, in the morning, PW2 with his colleagues, including PW4 and one Eric Kamasian were conducting routine patrol within the Loliondo Game Controlled Area. In the course of patrol, they were tipped off by their informant that some people had killed a giraffe at Sero area, within Loliondo Game Controlled Area. At about 10:30 am, while on their way to the directed area, they met five persons carrying meat. They decided to arrest them. In the course of the arrest, they managed to apprehend only three persons, as the other two managed to slip away leaving behind parts of the meat they were carrying. Upon the arrest, they inspected the meat and found it to be of a giraffe, together with its head. What's more, the three suspects, they managed to apprehend, had a bow and two double-edged knives. The meat and Exhibit P3 were accordingly seized via Exhibit P4.

then procured the sought order from a Resident Magistrate whom, again, he does not remember, but still believe that he was one because he went into a chamber of a Resident Magistrate. Having procured the order, PW3 took the meat back to his office where he proceeded to dispose of by burying. Thus, he tendered Exhibit P6 in lieu of the impounded giraffe meat.

In their defence, the accused persons categorically refuted to have committed both offences. They also denied to have been arrested at the alleged crime scene on 8<sup>th</sup> August, 2017; and to be involved in any mini proceedings before a Resident Magistrate at Arusha on 9<sup>th</sup> August, 2017 for the alleged order purportedly sought for purposes of disposing the trophy in question. According to the first accused person (DW1), on 8<sup>th</sup> August, 2017 he was home at Ololosokwan Village with his family. He was arrested on 21<sup>st</sup> August, 2017 by some people in civilian clothes, who threatened him with a handgun and took him to their vehicle. During the arrest, he was not found with any trophy or weapon whatsoever. On 4<sup>th</sup> September, 2017 he was arraigned before the Resident Magistrates' Court of Arusha at Arusha where he met with his co-accused persons for the first time. He also denied to have been present or involved in any court proceedings where PW3 allegedly sought an order of dispose of the meat in question. He further testified that, none among the persons who arrested him appeared before this Court to testify. As for PW2 and PW4, he claimed to see them for the first time on the date they appeared before this Court to testify. It was his plea that, his name is Petro Bura Tlehhema and not Peter Bura.

On his party, the fourth accused person, (DW4) claimed to have been arrested on 9<sup>th</sup> August, 2017 at his home, at Ololosokwan Village while he was taking out the goats for grazing. He was arrested by persons living at the camp of Mwarabu on the reason that, he refused to evacuate from Ololosokwan Village. He was later taken to Wasso area, where he handed over to KDU officers. They then drove off to KDU offices at Arusha, where they arrived on 10<sup>th</sup> August, 2017 and met the second and third accused persons. As for the first accused person, he met with him for the first time on 4<sup>th</sup> September, 2017 when they were taken to court. According to him, on different days between 10<sup>th</sup> August and 4<sup>th</sup> September, of the same year, they were taken to Arusha police station and KDU offices back and forth, severally. He also claimed to have been assaulted and forced to sign a document which he did not know. He denied to have been found with meat or a bow. Just like his fellows, he denied to have been involved in any court proceedings prior to 4<sup>th</sup> September, 2017 when he was officially arraigned.

In a nutshell, that was the evidence of the Prosecution and Defence. Having considered the evidence on record, the main issue before the Court for determination is whether the Prosecution side has proved the case against the accused persons beyond reasonable doubt.

It is vital to underscore that, according to section 3 (2) (a) of the Evidence Act [Cap. 6 R.E. 2019], in criminal matters, a fact is said to be proved when the court is satisfied by the prosecution beyond reasonable doubt that such fact exists. On this, see also the case of **Nathaniel Alphonse Mapunda & Benjamini Alphonse Mapunda v. Republic**

the case beyond reasonable doubt. However, the determination of this issue rests on other two other specific issues, namely, **one**, *whether the accused person hunted the alleged giraffe*; and **two**, *whether they were found in possession of giraffe meat*.

Although the evidence on record shows that PW2 and PW4 identified all accused persons as the ones who were found in possession of the alleged giraffe meat on 8<sup>th</sup> August, 2017, but all accused persons denied to have been arrested on that date. They also denied to have hunted the said giraffe. Apparently, looking closely at their defence, the accused persons were attempting to introduce and rely on the defence of *alibi*, because all of them claimed not to have been at scene of crime on 8<sup>th</sup> August, 2017. The second and third accused persons claimed that, they were arrested prior to the date of alleged incidence, and therefore, on the date alleged to be the date of the commission of the offence, they were already under custody in Arusha. On the other hand, the first and fourth accused persons claimed that, on 8<sup>th</sup> August, 2017 they were at their respective homes. However, their defence of *alibi* flawed the procedure laid down under section 42 (1) and (2) of the EOCCA. According to this section, the accused persons ought to have notified the Court of their intention to rely on the defence of *alibi* during the preliminary hearing. They did not do so. Besides, they did not furnish the Prosecution side with particulars of their *alibi* before the closure of prosecution's case as required under subsection (2). However, be it as it may, the weakness of the defence's cannot be used as the basis for their conviction.

reasonable doubt that, it was the accused persons who hunted and killed the said giraffe. Thus, the first specific issue is answered in the negative.

Now, reverting to the second issue, it is well known that, the salient ingredient of the offence of unlawful possession of a government trophy is "the government trophy", which according to the second count in the amended information is "the giraffe meat and head". In order to prove this ingredient, the government trophy must be physically tendered as evidence in court. However, ordinarily, there are two types of exhibits; perishable and imperishable. For perishable exhibits like meat, they are normally disposed of at the earliest stage either prior to, or during the proceedings.

Fortunately, issues of disposal of perishable exhibits are not novel in our criminal jurisprudence. There are various laws, in the meaning of principal and subsidiary legislation, which provide for legal processes and procedure to be followed in disposing of exhibits of such nature. Among them are; section 353 (2) of the Criminal Procedure Act [Cap. 20 R.E. 2019], section 23 (1) of the EOCCA, section 101 of the WCA, section 36 of the Drug Control and Enforcement Act [Cap. 95 R.E. 2019], paragraph 25 of Police General Orders (PGO) No. 229, just to mention a few. Of these laws, some provide for powers to order disposal of exhibits, others provide for powers as well as procedure, while others just for the procedure, like in the case of the PGO.

No doubt, the exhibit in this matter, some meat and head of a giraffe is perishable. Section 101 (1) of the WCA provides for powers of the court

*were tendered and admitted in court. The appellants did not have any opportunity to raise an objection. It is well established practice in cases where witnesses are required to testify on a document or object which would subsequently be tendered as Exhibit that the procedure is not simply to refer to it theoretically as was the case here, but to have it physically produced and referred to by the witness before the court either by display or describing it and then have it admitted as an exhibit. The court treated the reports produced by PW1 as conclusive. Given the position, the requirements under the law have not been met.”* (Emphasis supplied).

From this extract, the Court of Appeal set a rule that, the accused person must be present and be heard before the court issues an order to dispose of perishable exhibit.

In February, 2017, section 101 of the WCA was amended by section 37 of the Written Laws (Miscellaneous Amendments) Act, No. 2 of 2017 to the extent that the powers of the court to issue an order to dispose of perishable exhibits were then on extended to ***prior to the commencement of the proceedings***. The new section now reads as follows:

*“(1) The **Court shall**, on its own motion or **upon application made by the prosecution** in that behalf-*

***(a) prior to commencement of proceedings, order**  
that-*

of the Court of Appeal I have just cited above. For instance, Section 23 (1) of the EOCCA, empowers the police while carrying out investigation before commencement of proceedings, to seek a disposal order from the court on perishable exhibits. In so doing, the police are guided by the procedure provided under the PGO, in particular Paragraph 25 of PGO No. 229 which provides that:

***"Perishable exhibits which cannot easily be preserved until the case is heard, shall be brought before the Magistrate, together with the prisoner (if any) so that the Magistrate may note the exhibits and order immediate disposal. Where possible, such exhibits should be photographed before disposal."*** (Emphasis supplied).

The procedure provided under the PGO was also discussed and approved by the Court of Appeal of Tanzania in the case of **Mohamed Juma @ Mpakama v. Republic**, Criminal Appeal No. 385 of 2017 (unreported). In that case, the trophies involved were one warthog, seven rock hyrax, two mongooses and one African hare. The police sought and procured a disposal order prior to commencement of proceedings. The Court of Appeal, after referring to the procedure provided under paragraph 25 of PGO No. 229, stated that:

***"The above paragraph 25 envisages any nearest Magistrate, who may issue an order to dispose of perishable exhibit. This paragraph 25 in addition emphasizes the mandatory right of an accused (if he is in custody or out on police bail) to be present before the Magistrate and be heard."***



procured the disposal order of the giraffe head and meat, which ought to be physically tendered in evidence. On the other hand, PW3 claimed that, after he conducted valuation, he prepared and completed the inventory form, Exhibit P6. According to his testimony, he took the accused persons' names from the handing over certificate prepared by the custodian of exhibits and filled them in Exhibit P6. After preparing Exhibit P6, he went to the head of their Zone and asked about the accused persons' whereabouts; he was told that they were at Police Station. He then called the Central Police Station and he was told that he will find the accused persons in court. According to him, on reaching in the Resident Magistrates' Court of Arusha, he found a police officer with the accused persons. After confirming their names, they entered in the chambers of a Resident Magistrate; he showed him the meat and accused persons.

From the testimony of PW3, it is not clear whether the second, third and fourth accused persons were present before the Magistrate on 9<sup>th</sup> August, 2017. The purported police officer who is alleged to have brought the accused persons to court from the Central Police Station was not called in to testify. PW3 did not even mention his name. He could not even mention the name of the Resident Magistrate who issued the disposal order. Unfortunately, in Exhibit P6 the name of the Magistrate is not disclosed as he only appended his signature on it. Apart from that, this witness was not sure where the Magistrate saw the meat in question. At first, he said that, after entering into the Magistrate's office, they showed the meat and accused persons, where the Magistrate issued the disposal order. But on cross-examination he admitted that, the Magistrate saw the meat in the vehicle

accused persons. Hence, the second specific issue is answered in the negative.

Therefore, since both issues have been answered in the negative, apparently, the Prosecution side failed to prove their case against the accused persons beyond reasonable doubt. Thus, the main issue is also answered in the negative.

In the upshot, therefore, the accused persons, Petro Bura Tlehhema, Julius Lekeya Sabore, Lekenii Mbaryo Pelengong'o @ Samwel and Losoruwa Letura Lochumali are found not guilty and thereby acquitted of the charged offences of unlawful hunting in a Game Controlled Area and unlawful possession of government trophy and are accordingly set free.



**I. K. BANZI**  
**JUDGE**

**11/05/2020**