

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

ECONOMIC CASE NO. 01 OF 2020

THE REPUBLIC

Versus

- 1. AMEDEUS S/O DIONIS KAVISHE @ TESHA @ FURAHA**
- 2. FREMINI S/O JULIUS MREMA**
- 3. ARISTIDIUS S/O ONESPHORY MASSAWE @ BOSCO**
- 4. EVANCE S/O NOLASCO SHIRIMA @ TITO**
- 5. SIMON BONIFAS TAIRO**

JUDGMENT

The accused persons: Amedeus s/o Dionis Kavishe @ Tesha @ Furaha (first accused), Fremini s/o Julius Mrema (second accused), Aristidius s/o Onesphory Massawe @ Bosco (third accused), Evance s/o Nolasco Shirima @ Tito (fourth accused) and Simon Bonifas Tairo (fifth accused) are indicted for unlawful possession of and dealing in 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) of the Written Laws (Miscellaneous Amendment) Act No. 3 of 2016. It is alleged in the particulars of offence that, on 21.7.2019 at Ikwini village within the district of Rombo in Kilimanjaro region, the accused persons above named were found in unlawful possession of and dealt in government trophies to wit eight elephant tusks equivalent to four killed elephants value USD 60,000 which is equivalent to Tsh 138,180,600/= the property of the government of the United Republic of Tanzania without a permit from the Director of Wildlife. The first accused had pleaded guilty to the information and was dully convicted and sentenced accordingly. The second accused, third accused, fourth accused and fifth accused denied an information.

A narration by prosecution witnesses is summarized as hereunder:

PW1 stated that on 15.7.2019 they interrogated one Wilson Ndekiwa Nko @ Willy in connection with a network of people dealing with government trophies. Wilson Ndekiwa Nko @ Willy mentioned his companion including Aristidius Onesphory Massawe @ Bosco (third accused) who was apprehended on 17.7.2019 at Moshi town near bus stand. Aristidius Onesphory Massawe @ Bosco (third accused) was interrogated orally and confessed

involvement in government trophy and promised to connect police with his companion including Evans Nolasco Shirima @ Tito (fourth accused). Aristidius Onesphory Massawe @ Bosco (third accused) while still under police restraint, dialed call to Evans Nolasco Shirima @ Tito (fourth accused) asking for a business of elephant tusks disguised to had procured purchasers, where the later confirmed to have eight whole elephant tusks weighing approximately 120 kilograms. The fourth accused suggested a price of 120,000/= per kilogram, but the same was discounted to 85,000/= per kilogram and proposed a business to be done on 21.7.2019 at Mashati area Shell station in Rombo district. On 21.7.2019 PW1 accompanied by A/Insp Mapunda, Solomon Jeremiah (PW2), the third accused (boarded one motor vehicle) and Isaack Nanyaro and A/Insp Mapunda (boarded another car), proceeded to Mashati area Shell station in Rombo district where they met the fourth accused at Shell station. Thereafter the fourth accused led PW1, PW2 and Insp. Mapunda who had posed as purchasers with a large bag of money, up to Kiraeli area where they picked some stakeholders including Fremine Julius Mrema (second accused) who was their host, Amedeus Dionis Kavishe @ Tesha (first accused) and Simon Boniface Tairo (fifth accused). Thereafter, proceeded to Ikwini area at a maize farm on a road

where there was a fenced vacant house. While there, the first accused, second accused escorted by PW2 collected two elephant tusks inside unfinished house not roofed which was at the middle of maize and sunflower farm. Then collected six elephant tusks from a gully river which were hide aside a large stone covered by leaves, making a total of eight elephant tusks. Thereafter the first, second, fourth and fifth accused were apprehended including the third accused who was inside a car. These facts were supported by PW2. PW2 procured an independent witness one Joseph Augustin Tarimo (PW3) and Francis Gabriel Marandu. PW1 marked the seized eight elephant tusks by label IK01, IK02, IK03, IK04, IK05, IK06, IK07 and IK08 (exhibit PE2), including the three sulphate bags which were marked IK09, IK010 and IK011, then recorded a certificate of seizure exhibit PE7.

After arrest and seizure of eight elephant tusks IK01, IK02, IK03, IK04, IK05, IK06, IK07 and IK08 (exhibit PE2); three sulphate bags IK09, IK010 and IK011 including the accused persons were taken to Mkuu Rombo Police Station, where PW1 handed over exhibit PE2 and the three sulphate bags IK09, IK010 and IK011 to DC Francisco (PW4) via a handing over certificate exhibit PE11, which were done on 21.7.2019 at 14.00 hours. On the same date at 18.00 hours, PW4 handed exhibit PE2 and the three sulphate

bags IK09, IK010 and IK011 to PW1. PW1 transmitted exhibit PE2 and three sulphate bags including the accused person to Police Arusha, where PW1 handed over exhibit PE2 and three sulphate bags to DC Japhet (PW5) via a chain of custody exhibit PE12. On 22.7.2019 at 06.30 hours PW5 handed over exhibit PE2 and three sulphate bags to Cpl Tausi (PW8) via a chain of custody exhibit PE12. On the same date at 16.54 hours, PW8 handed over exhibit PE2 and three sulphate bags to Anthony Ntoros Peria (PW7) via a chain of custody exhibit PE12. PW7 conducted identification and valuation in respect of eight elephant tusks. According to PW7 if the eight elephant tusks are joined could form four elephants valued 60,000 USD equivalent to Tsh 138,180,000 as per trophy valuation certificate exhibit PE10. Shortly thereafter, PW7 handed over exhibit PE2 and three sulphate bags to James Kugusa (PW6) who is an exhibit keeper at Anti Poaching Unit (KDU) Njiro Arusha, via a chain of custody exhibit PE12. PW6 preserved the eight elephant tusks wrapped by three sulphate bags until when were brought to court for trial.

On 21.7.2019 at 15.02 DC Leodger recorded a caution statement for the second accused which was admitted and marked exhibit PE14. On the same date at 16.00 hours D.S/Sgt Jumanne (PW9)

recorded a caution statement for the fifth accused which was admitted as exhibit PE13.

On defence, Fremini Julius Mrema DW1 (second accused), stated that on 21.7.2019 in the afternoon at Ikwini, while cutting grasses with a cutlass "shami" for cows, he was surprised seeing two people running. Shortly thereafter he was arrested by three police officers and taken to the road, where there was one youth and aside there was a large bag.

Aristidius Onesphory Massawe DW2 (third accused) explained to have proceeded to Kiraal Lower Road, in company with PW1, PW2, Mapunda and Isaack. On arriving there, he remained with Mapunda and the rest left. Thereafter they came back with a luggage loaded on a carrier and strange people in a car. He contended to have been arrested in possession of nothing. Denied to have participated in anything.

Evance Nolasco Shirima DW3 (fourth accused) stated that he was hired by two people at Shell Mashati area, to ferry them by a bodaboda to Lower Road, a distance of 18 kilometers for fare of Tsh 20,000/=, but they paid a less sum of Tsh 5,000/=. When he was demanding for his money, they told him they will teach him a lesson, where one of them fisted DW3, arose a quarrel fight. He

was overpowered, arrested and handcuffed. He was taken to Arusha Police via Rombo, where he was stripped off clothes, beaten. He denied to had communicated with Aristidius. He denied knowing Aristidius, Fremini and Boniface.

Simon Boniface Tairo DW4 (fifth accused) stated that on 21.7.2019 at Bwawani street Ikwini village, he was hired by people who asked him to follow and fetch a car of their colleague make Cruiser, grey colour for a price of Tsh 10,000/=, but refused to pay, instead arrested him. He was taken to Arusha Police via Mkuu Rombo police. He denied dealing with or trading on government trophy.

In this matter Mr. Omary Abdallah Kibwana learned Senior State Attorney, Mr. Ignas Mwinuka learned State Attorney and Ms. Lucy Kyusa learned State Attorney appeared for the republic and the second accused was under representation of Mr. Innocent Habakuki learned Advocate, third accused was represented by Ms. Fay Grace Sadallah learned Advocate, the forth accused was under representation of Mr. Desderius Hekwe learned Counsel and Ms. Lilian Mshemba learned Counsel was for the fifth accused. Prosecution and defence side, except the third accused, filed closing submission which shall be deliberated in the due course.

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

Essentially the testimony of PW1 and PW2 implicate the second, fourth and fifth accused to have been arrested at the scene at Ikwini village, where the first accused, second accused escorted by PW2 collected two elephant tusks and three sulphate bags inside unfinished house not roofed constructed at the middle of maize and sunflowers farm. Then collected six elephant tusks from a gully river which drain water during rainy season, hide aside a large stone and covered by leaves, making a total of eight elephant tusks. Even on defence, the second, fourth and fifth accused gave explanation which bring them near to the scene crime. As such their defence: second accused (DW1) that he was arrested while cutting grasses at Ikwini at a farm of Joseph Tarimo alleged his father in law, is unfounded. As that fact was not put on cross examination to PW1 and PW2. DW1 did not make it clear whether the alleged father in law one Joseph Tarimo is the same Joseph Augustin Tarimo who appeared to testify for prosecution as prosecution witness number three. Be as it may, in a caution statement exhibit PE14, the second accused confessed to had been assigned to preserve elephant tusks. The second accused also confessed to had carried the

elephant tusks on the material day from where he preserved. A defence by the fourth accused (DW3) that he was arrested after the one who hired his bodaboda from Shell to Lower Road refused to pay a fare, is a concoct. Equally a defence by the fifth accused (DW4) that he was arrested at Bwawani street Ikwini village after the one who hired his motor cycle refused to pay a sum of Tsh 10,000, is a fabricated story. The evidence of PW1 and PW2 is cogent that the second, fourth and fifth accused were part and parcel in actual and constructive dealing and involvement on a transaction of peddling the eight elephant tusks (exhibit P2) which were seized to them through a certificate of seizure exhibit PE7. An argument that exhibit PE7 does not indicate the place where the eight elephant tusks were found, is devoid of merits. A mere fact that certificate of seizure does not reflect a place of seizure, that alone does not make a whole certificate of seizure invalid. More important, PW1 and PW2 explained that the eight elephant tusks were seized at Ikwini Village. Therefore a defence by the second, fourth and fifth accused is dismissed.

An argument by the learned Counsel for second accused that PW2 said at the scene there were residential houses, while PW1 said the area had no habitat, is a minor discrepancy which does

not dent a central story that the second, fourth and fifth accused were arrested in possession of eight elephant tusks.

An argument by defence Counsel that one Marangu was not summoned or that a phone for the third accused was not tendered, is immaterial. That was a discretion of prosecution and did not affect the substance of evidence presented on how the second, fourth and fifth accused were apprehended in possession of eight elephant tusks.

The learned Counsel for fifth accused submitted that the evidence against the fifth accused was circumstantial, as the fifth accused was not arrested in actual possession or dealing with elephant tusks. But as submitted by the learned State Attorney, the fifth accused was in constructive possession and dealing with elephant tusks, as he was at the scene. And even after he was send to fetch the other motor vehicle of police, he hurriedly resumed back to the deal at the scene only to be arrested. As such the fifth accused cannot distance himself, on merely fact that he did not touch physically the eight elephant tusks.

Having adumbrated as above, I find the prosecution have managed to prove an information against the second, fourth and fifth accused to a required standard. However, an information

levelled to the third accused was not proved, there be no evidence of his active involvement in possession or dealing with those eight pieces of elephant tusks. A mere fact that he assisted PW1 and PW2 to connect them to the fourth accused, cannot be said is a proof of his involvement in elephant tusks. His role was passive.

I did not consider a caution statement of the fifth accused exhibit PE13, as PW9 who recorded it did not sign. He purported to had signed by his force number. But he failed to explain what guide him to sign by merely inserting force number. And in view of the fact that the fifth accused had refuted PW9 to had recorded exhibit PE13, it create doubt.

The third accused is acquitted.

The second, fourth and fifth accused are found guilty and convicted for unlawful possession of government trophy (first count) and unlawful dealing in government trophy (second count), 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.



E.B. Luvanda
JUDGE
8/9/2020

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PROCEEDINGS AFTER JUDGMENT:

Date : 08/09/2020
Coram: Hon. E.B. Luvanda, J.
For Republic: Mr. Ignas Mwinuka SA, Mr. Kassim Nassir SA,
Ms Lucy Kyusa SA

For 2nd Accused: Mr. Innocent Habakuki Nsyenge Advocate
For 3rd Accused: Ms. Fay Sadala Advocate
For 4th Accused: Mr. Desderius Hekwe Advocate
For 5th Accused: Ms. Lilian Mshemba Advocate

2nd Accused: Present
3rd Accused: Present
4th Accused: Present

5th Accused: Present
C/Clerk: Mr. Amos Mpondyo

Court: Judgment delivered at open court.

Sgd: E. B. Luvanda
Judge
08/09/2020

Court: Prosecutor and defence Counsel are invited to address, previous conviction and mitigation, respectively.

Mr. Ignas Mwinuka, State Attorney: Principally we have no previous records for 2nd, 4th and 5th accused. However, we submit that the convicted accused deserve to be sentenced maximum sentence as per section 60(2) of Cap 200 R.E 2002 amended by Act No. 3 of 2016, we therefore pray for the court to impose a stiff sentence, as an act committed by the accused persons is a serious destruction which sabotage country's economy, also deprive future generation to enjoy natural resources. We ask for it to be a lesson to themselves and others. We have a prayer in respect of eight elephant tusk (exhibit P2) be for forfeited to the government. That is all.

Mr. Nsyenge Advocate: On behalf of the second accused, the court should consider that the 2nd accused have been cooperative. The second accused has a family of six children depend on him. Also as explained by Prosecutor, the second accused have no previous records. We therefore pray for the second accused to be given a lenient sentence.

Mr. Hekwe Advocate: After the court convicted the 4th accused, I pray to mitigate on his behalf, the 4th accused is a solo youth who's his family depend on him, including two children, wife and also his mother. Since the arrest, the 4th accused have been in remand for more than a year. It is to be known that to commit an offence is not an offence, rather to repeat an offence is wrong. As submitted by prosecutor, that the 4th accused is a first offender. Since we commenced trial, 4th accused have been cooperative. We therefore pray for lenient sentence. That is all.

Ms. Mshemba, Advocate: On behalf of the 5th accused, it's our submission that he deserves lenient on the following, he is a first offender. The court should consider time the accused have been in remand prison, he learnt a lot. The 5th accused is still a youth, national manpower, and is a senior child who his family depend on him for earning. The 5th accused is sick (liver), he attends treatment at KCMC. I insist for lenient sentence as it pleases the court.

SENTENCE

A sentence for the first and second count is statutory prescribed and court's discretion is almost taken away. Therefore, the 2nd, 4th and 5th accused are sentenced as follows;

1st count: Each accused is sentenced to pay a fine of Tshs. 34,545,000/= on account of burden sharing among the 1st, 2nd, 4th and 5th accused or serve a term of twenty years imprisonment, which is the minimum.

2nd count: Each accused is sentenced to serve a term of twenty years imprisonment, as the subject matter is the same to that of the first count.

A sentence of imprisonment imposed on the first and second count shall run concurrently.

E. B. Luvanda
Judge
08/09/2020

Order: Exhibit P2 of elephant tusks, is forfeited to the government.

E. B. Luvanda
Judge
08/09/2020

Court: Right of appeal is there.

E. B. Luvanda
Judge
08/09/2020

Third accused's Address

Physical address: Nenijalela Street, Nayema Village, Rombo district

Suburb Chairperson: Michael Makeju

Mobile phone (accused's wife): 0745-275899