

**IN THE DISTRICT COURT OF MPANDA  
AT MPANDA**

**EC. CRIMINAL CASE NO. 17/2013**

**REPUBLIC**

**VS**

**CHEREHANI MAYOMBI & KAMAMA LUKUBAJA .....ACCUSED**

**JUDGMENT**

**BEFORE: C. M. TENGWA, -RM.**

The accused persons are Cherehani Mayombi and Kamama Lukubaja. They are arraigned of one count namely unlawful possession of government trophy contrary section 86(1) and 2(c) (iii) of the **Wildlife Conservation Act** No. 5 of 2009 read together with paragraph 14(d) of the first Schedule to and section 57(1) and 60(2) of the **Economic and Organized Crime Control Act Cap 200 RE 2002**).

It was alleged by the prosecution side that on the 9<sup>th</sup> day of October 2013 at Mnyamasi village within Mpanda District in Katavi Region the accused persons namely Cherehani Mayombi and Kulwa Lukubaja were found in unlawful possession of a skin of a lion valued Tshs 7350,000/= and a skin of leopard valued Tshs 5,250,000/= the property of the United Republic of Tanzania without any written permit to possess the same. The accused denied the allegations and two witnesses were brought to disapprove their denials.

PW1 **one Alexander Gerald** who gave testimony by describing himself as a game warden. He testified in court that on the 18<sup>th</sup> day of October 2013 he was in the office. Then government trophy was brought for evaluation. The trophies that were brought were skins of lion and leopard. He evaluated the skin of lion and found it valuing USD 4900.00 and a skin of a leopard valued USD 3500. The two skins had a value of USD 8400. At that time one USD was exchanged with 1500 USD. The total value of the two skins in Tanzanian shillings were twelve million and six hundred thousand. He endorsed the figure on the certificate of

evaluation of trophies. He prayed to tender the same as exhibit and the court admitted the same as exhibit Tan 1.

Thereafter, came **PW2 one Assistant Inspector Mhanga** who described himself as a police officer. He testified in court that on the 9<sup>th</sup> day of October 2013 he was in the operation. They traced the house and found the 1<sup>st</sup> accused person one Cherehani and told him that they wanted to search his house with a view of confiscating government trophies and firearms. The 1<sup>st</sup> accused person allowed them search his house but found nothing.

The 1<sup>st</sup> accused person told them that the house belonged to his relative and he had come there to pay a visit. They entered into the 2<sup>nd</sup> house and found the 2<sup>nd</sup> accused person. They searched into the house and found a piece of skin of a lion and a piece of a skin of a wild cat. The 2<sup>nd</sup> accused person told them that she used those skins to medicate her children. After they found those items they recorded the same on a certificate of seizure. He prayed tender a certificate of seizure as exhibit and the court admitted the same as exhibit Tan 2.

The evidence of PW2 marked the end of prosecution hearing. The court found a prima facie case being made against the accused persons. Their rights to give defence, call witness and tendering exhibits were explained.

The defence hearing was opened by DW1 one Cherehani Mayombi who gave his defence by telling the court that in the year 2013 he travelled to Mnyamasi. On the 9<sup>th</sup> day of October 2013 at 03:00hrs he was awakened by the light of the torch. He thought the kraal was broken. He picked the torch, got outside and saw park rangers and police officers.

Before moving any further, he got ordered to stop where he was. He stopped. One of the police seized his torch. They asked him whether he was the owner of

the house. He replied them that he was only a visitor. They asked him the whereabouts of his host. He replied him that his host had two boma's and he was likely to be in another boma. While talking the 2<sup>nd</sup> accused came and told her that there were men with guns.

The police entered into the house of the mother of the 2<sup>nd</sup> accused person. He stopped at the door and witnessed what were going on. They searched and found nothing. They took and hide them in the forest. The police officer came with a skin and discussed whom it should be given. He refused to be given the said trophies. They took him to the police station. He told the police what happened. Thereafter, he was taken up to the police station.

Thereafter came DW2 one Kamama Lukubaja who gave her defence by telling the court that before the demise of her grandfather, her grandfather told her parents that his properties that he was been using for tradition healing should be passed to her. At that time she was too young to know what really mean. She did not know what to do with those skins.

As the charge sheet manifests, the accused person was arraigned of unlawful possession of government trophies. For a person to be pinned down with the offence, the prosecution side has to prove that the accused person was in the possession of the government trophies without a permit. There is no doubt that skins of leopard and lion are government trophies in terms of section 84 of the **Wildlife Conservation Act No 5 of 2009**. The same were alleged to have been found in the house of the mother of the 2<sup>nd</sup> accused person.

The evidence shows that the 1<sup>st</sup> accused person was a visitor and there was nothing retrieved in his house. The act of being a visitor deprives him a chance of knowing and controlling the stuff of his host. He was therefore incapable of possessing the same. This court, therefore, finds the accusations against the 1<sup>st</sup> accused person not being proved beyond reasonable doubts. It henceforth finds

the 1<sup>st</sup> accused person not guilty of the offence and acquits him under section 235 of the **Criminal Procedures Act Cap 20 RE 2009**.

In respect of the 2<sup>nd</sup> accused person there is no doubt that the skins of leopard and lion were retrieved from the house of her mother. She alleged the skins and other stuffs relating to tradition healing to have been passed to her by her deceased grandfather. It is of equal importance to note that where one is accused of unlawful possession of government trophies the stuffs alleged to have been possessed unlawfully have to be tendered in court as exhibit. The prosecution side simply produced certificates of seizure and evaluation of government trophies.

The matter would have been worse to the prosecution side if the 2<sup>nd</sup> accused person would have been denied to possess the said trophies. The admission of the accused person has watered down the requirement of tendering the skins as exhibits. It has transpired from the prosecution evidence that the 2<sup>nd</sup> accused was using the same to medicate her children. In her defence she alleged to have inherited the same from her deceased grandfather who had knowledge of traditional healing.

At the date of arrest the accused person was nineteen years of age. Her age and demeanor suggest that she inherited the same from her grandfather. The 2<sup>nd</sup> accused person was therefore obliged to report her possession over the relevant authority but did not do that. This court, therefore, finds the accusations of possessing government trophies not being proved beyond reasonable doubt. But it finds her guilty of the offence of failure to report under section 87 of the **Wildlife Conservation Act No 5 of 2009**. It henceforth convicts her under section 235 of the **Criminal Procedures Act Cap 20 RE 2002**.

**Sgd.**  
**C.M. Tengwa RM**  
**26/03/2014**

PP: Records of previous conviction

I pray for stiff sentence as these types of offence are rampant in the society.

### **Mitigation**

I am a first offender and a young woman. As I look, I have a pregnancy of nine months. I can deliver at any time. I pray for forgiveness as I am a first offender.

### **SENTENCING**

The accused person is first offender as there is no any record of her previous conviction. Her pregnancy is at advanced stage as she can deliver at any time from today. The purpose of punishment is that of rehabilitating the offender. The society on the other hand has to be given due regards as its well being depends on the existence of the natural resources. This court has taken all those into account. It, therefore, sentences the accused person to pay a fine of one hundred thousand or serve a sentence of two months in prison in case of default.

**Sgd.**

**C.M. Tengwa RM**

**26/03/2014**

Delivered on the 26<sup>th</sup> day of March 2014 in the presence of the accused person and the prosecutor.

**Sgd.**

**C.M. Tengwa RM**

**26/03/2014**

Right to appeal is available to the aggrieved party and is hereby explained.

**Sgd.**

**C.M. Tengwa RM**

**26/03/2014**