

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

EC. CRIMINAL CASE NO. 07/2009

**REPUBLIC
VS**

STIVIN SIMBAACCUSED

JUDGMENT

BEFORE: C. M. TENGWA, -DRMi/c.

The accused person one **Steven Simba** is arraigned of unlawful possession of government trophies contrary to sections 70(1) and (2)(c)(iii) of the **Wildlife Conservation Act (Cap 283 RE 2002)** read together with paragraph 14(d) of the 1st schedule to and sections 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 2nd day of May 2009 at Mpimbwe-Usevya village within Mpanda District in Rukwa Region the accused person one Steven Simba was found in unlawful possession of 7.05 of Zebra meat valued Tshs 1,000,000/= 5kgs of Hippopotamus meat valued Tshs 2,500,000/=, 7.05kgs of Giraffe meat valued Tshs. 840,000/= and 14kgs of Buffalo valued at Tshs 1,800,000/= the property of the United Republic of Tanzania without a valid permit.

PW1 **one Cyprin Msahila** gave testimony by describing himself as a warden at Katavi. That, on the 2nd day of May 2009 at 2300hrs they were in the office. They heard that there was a bandit transporting trophies from Usevya to Sumbwanga. They went to the scene of the crime with other park rangers. At the scene of the crime they saw the suspects stopped the motor van and found the accused person, a pregnant woman and a boy, Nassoro Ngonyani and a student. They searched the car and found maize and the meat. The meats were

of hippopotamus, buffalo and giraffe. The driver one Nassoro Ngonyani told them that the meat belonged to the accused person accused. They took the accused person up to the police station and the accused had no permit authorizing him to possess the same. Stivin Simba denied the meat and alleged to belong to another person who escaped.

Thereafter came PW2 one Martin Leonard who gave his testimony by telling the court that on the 2nd day of May 2010 at about 2200hrs he heard from their informer that there were three people who were loading the meat (trophies) from Usevya to Sumbawanga. They organized themselves (Cyprian, Msabila, filbert Shamim and others). They went to the scene of the crime. It was near kibaoni and Usevya. The van carrying the meat (trophies) was registered as T 728 AAV.

They stopped it and two people escaped. They introduced themselves their purpose. There were almost five people remained in the car. They searched the motor van and found 26 kg of maize and three bags loaded with meat (trophies). They took them up to Mpanda for evaluation. It was revealed that the meat were of a buffalo, zebra and hippopotamus. The driver and the conductor told them that the meat belonged to the accused person and two others who escaped. He personally saw the two men who escaped.

They interrogated the accused person and denied the meat to be his and alleged the same to belong to the two thugs who escaped. From that he discovered that the accused person possessed the meat with the two who escaped. They unloaded the meat and allowed the car to go. They took the accused person to the Mpanda police station. The accused person had no permit authorizing him to possess the same.

Thereafter came PW3 one Hassani Mbonea who gave his testimony by describing himself as a game warden working in the department of natural resources. One of his duties included that that of evaluating government trophies. He showed the evaluation form which had trophies of zebra, giraffe and buffalo. The trophies valued at Tshs 6,140,000/= . He prayed to tender the trophy evaluation certificate and the court admitted the same as exhibit dated 3.8.09.

The testimony of PW3 was preceded by the testimony of **PW4 one Filbert Shirima** who gave his testimony by describing himself as a park ranger. On the 2nd day of May 2009 he was patrolling between Usevya and Kibaoni with his fellow park rangers. They got information that there were trophies that were being transported to Sumbawanga. In between they saw a motor car with registration number T. 798 AQV driven by Nassoro Ngonyani.

They introduced themselves and were allowed to inspect it. Two people escaped from the car and took on their heels. They searched the car and found a meat of hippopotamus, giraffe, and a buffalo. They interrogated the driver and conductor and told them that Stivin Simba who was a passenger. They arrested Stivin Simba who was a passenger and took him to the Mpanda Police Station. The trophies were in the bags.

The testimony of PW4 was preceded by the testimony of **PW5 one Dioz Mazengo** who gave his testimony by telling the court that on the 3rd day of May 2009 he was working in the OC CID Office. While in the office the accused was caught with (government trophies) the meats of an elephant, hippopotamus and a giraffe. He went to the District Court in order to let the meat to be destroyed and noted as exhibit. The magistrate agreed the meat to be destroyed and signed the inventory form.

He prayed to tender the same as exhibit and the court admitted it as exhibit Tan 2. The evidence of PW4 marked the end of prosecution hearing and the court found a prima facie case being made against the accused person. It explained to the accused person of his right to give defence and call witnesses.

DW1 one Stivin Simba gave his testimony by telling the court that on the 2nd day of May 2009 he was at his residence at Mpimbwe Mbugani. He was informed that his father was seriously sick. He rushed to Usevya with a view of catching the bus. He kept on waiting for transport and when reached 2130hrs he managed to boarder a lorry. They started the journey and while on the way between Usevya and Kibaoni they met Tanapa Park Rangers who stopped them.

They interrogated the driver. Suddenly two passengers who were with him escaped from the lorry and the park rangers fired into air with a view of stopping them. The park rangers failed as the men disappeared into the forest. The rangers returned back and started to search into the lorry and retrieved nothing. They took him out of the lorry, beat him up and forced him to tell them the names of the fled passengers.

He replied to know nothing but they kept on beating him. At last they took him to Stalike and rejuvenated their tortures. At 05:00hrs they brought him to the Mpanda Police Station and stranded there for one week. He was brought in this court and got charged with the offence he is facing. He disputed the evidence and the exhibits tendered in this court for being cooked and collected from the Katavi National Park. The witnesses differed in respect of the exhibits tendered in court. He prayed the court to set him free.

As the charge sheet manifests, the accusation of the named accused person lays under sections 70(1) and (2) of the **Wildlife Conservation Act Cap 283 RE 2002** read together with paragraph 14(d) of the 1st schedule to and sections

57(1) and 60(2) of the **Economic and Organized Crime Control Act Cap 200 RE 2002.**

In this regard, the prosecution side has to prove beyond reasonable doubts that the accused was in unlawful possession of the stated government trophies. It is free from doubt that the accused person was one of the passengers that boarded a lorry with registration number T. 798 AQV house was searched. What is strongly disputed is the outcome of the alleged search.

According to PW1, PW2 and PW4 the search led to the retrieval of meats of different wild animals such as buffalo zebra and hippopotamus. The accused denied and insisted that nothing was retrieved by the inspection made by the Tanapa. As such, this center of controversy has to be settled. It was conceded by both sides that two passengers fled when the park rangers stopped the car. From that juncture one can correctly ponder that there was something odd in the car or within the fled passengers. According to the statement of the driver that was filed in court under section 34B of the **Evidence Act Cap 6 RE 2002** on the 15th day of November 2011, three parcels were loaded in his car by three passengers and the accused person was one of them.

It was those parcels which the park rangers opened and alleged to have government trophies. The park rangers seemed to act under section 42 of **Criminal Procedures Act Cap 20 RE 2002** but they had no power as such power is confined to the police officer. But I section 16 and 14(c) of the **Criminal Procedures Act Cap 20 RE 2002** allows a private person to arrest a person who is in possession of a property in respect of which an offence has been committed. The powers of arrest go together with that of search.

The last question is whether the accused person was in the possession of the government trophies. PW1 and PW3 testified to have seen accused in the van

the fact that was admitted by the accused. The driver whose statement was filed in this court admitted to have carried the accused and his three fellows with three parcels which later on were discovered to have government trophies. The driver stated that the accused participated in the loading of the three luggages. The act of the accused person to stop the car and load the luggages and pay the money with the culprits draws an inference that the three had a common venture and the possession of one is the possession of the rest. This court therefore finds allegations being proven beyond reasonable doubts. It finds him guilty and convicts him as charged per section 235 of the Criminal Procedures Act Cap 20 RE

Sgd.
C.M. Tengwa DRMi/c
06/06/2013

Public Prosecutor

Records of previous convictions:

There is no record of previous conviction. However, I prayer for a stiff and a deterring penalty as poaching activities are rampant in the Katavi National Park. Animals are being killed and some species are in danger of perishing. For the sake of the coming generation I pray the court to sentence the accused severely.

Mitigation

“ I pray for a lenient sentence as I have a family that depends on me”

Sentencing

There is no doubt that the accused is a first offender. He has prayed for forgiveness. The prosecutor on the other hand has prayed the court to inflict a sentence that will send a lesson to other persons. The interests of the two can be given due regarding if one balances them. The purpose of punishment has always been to rehabilitate the offenders not to torture them.

Since the role of a punishment is to rehabilitate this court similarly takes into account the two years which the accused has stayed in the prison. It, therefore, sentences him serve a sentence of ten (10) years in prison.

Sgd.
C.M. Tengwa DRMi/c
06/06/2013

Delivered on the 6th day of June 2013 in the presence of the accused person and the Prosecutor.

Sgd.
C.M. Tengwa DRMi/c
06/06/2013

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

Sgd.
C.M. Tengwa DRMi/c
06/06/2013