

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

EC. CRIMINAL CASE NO. 20/2015

REPUBLIC

VS

KATABI BONIFACE @ SAVERYACCUSED

JUDGMENT

BEFORE: C. M. TENGWA, -RM.

On the 14th day of January 2015 a meat of hippopotamus weighing 1.5kilogram was found and seized in the house that was believed to be occupied by the accused person. As a result, the accused person was arrested and arraigned of 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).

There is no doubt that the meat found in the alleged house was a government trophy that required a permit for its possession under section 86 of the **Wildlife Conservation Act No 5 of 2009**. This was due to the evidence of PW3 one Alexander Gerard who examined, valued it and cemented his evidence by tendering exhibit P2. The only question to be asked and given an answer is whether the accused person was in the possession of the said 1.5kilogram of hippopotamus meat?

It is free from doubt that the **Wildlife and Conservation Act No. 5 of 2009** has not subscribed any meaning or circumstance of possession.

The remarkable subscription of the meaning and circumstances of possession was articulated in **Moses Charles Deo v Rep 1987 TLR 134** the Court defined it as follows:-

for a person to be found to have had possession, actual or constructive, of goods it must be proved either that he was aware of their presence and that he exercised control over them, or that the goods came, albeit in his absence, at his invitation and arrangement;

It has appeared that from the prosecution evidence that PW2 was the sole independent witness. The rest were park rangers. At the time of search neither the accused person nor his family member was there. PW2 who was the independent witness alleged the house searched to be occupied by the accused person. His evidence was cemented by PW7 who testified to have rented the said house to the accused person.

I don't have any reason to doubt the credibility and reliability of PW2 and PW7. The two had no any reason of implicating or speaking lies against the accused person. Likewise, the accused himself asked to adopt the evidence of PW2 without any reservation. Moreover, some of the prosecution witnesses particularly the park rangers alleged to have seen the accused person taking on his heel soon after he had

seen them. Some of the meat was in the kitchen and another was in the house.

Even PW2 who was the ten cell leader testified to have seen the stuffs being retrieved from the cooking pot (sufuria) and a container. The manner in which the stuffs were found draws an irresistible inference that the occupier of the house had both knowledge and control of the same. Likewise, it strengthens the assertion that the occupants took on their heels as it was not possible to the meat of the same animal in a cooking pot both in the kitchen and the house which is not occupied.

The accused being the occupant of the house either took on his heel as testified by the park rangers or knew the presence of the meat and controlled the same. The accused person was therefore in the possession of both meats found in the house and the kitchen. After having been satisfied that the accused person was in the possession of the same, the last question is whether he had a permit of the director of wildlife.

The accused person was supposed to prove how legally he possessed the same. This would have been made by a way of tendering a permit of a director of Wildlife as required by section 86 of the **Wildlife Conservation Act No. 5 of 2009**. On the basis of the above reasons this court finds the accusations against the accused

person being proved beyond reasonable doubts. The court finds him guilty and convicts him under section 235 of the **Criminal Procedures Act Cap 20 RE 2009.**

Sgd.
C.M. Tengwa RM
28/01/2016

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. I pray for forgiveness as I am a first offender.

SENTENCING

The accused person is first offender as there is no any record of his previous conviction. 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 serve a sentence of twenty (20) years in prison.

Sgd.
C.M. Tengwa RM
28/01/2016

Delivered on the 28th day of January 2016 in the presence of the accused person and the prosecutor.

Sgd.
C.M. Tengwa RM
28/01/2016

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

Sgd.
C.M. Tengwa RM
28/01/2016