

**IN THE RESIDENT MAGISTRATE COURT OF KATAVI
AT MPANDA**

EC. CRIMINAL CASE NO. 5/2015

REPUBLIC

VS

JUMA MPEMPA.....ACCUSED

JUDGMENT

BEFORE: C. M. TENGWA, -RM.

On the 24th day of July 2015 the compound of the accused person was searched into and a tusk of elephant valued Tshs twenty four millions seven hundred and fifty thousand (Tshs 24,750,000/=) was found. The accused person was arrested and taken to the police station and finally to the court where he was arraigned of unlawful possession contrary to sections 86(1) and (2)(b)(c) (ii) of the **Wildlife Conservation Act No. 5 of 2009** read together with paragraph 14(d) of the 1st schedule and section 57(1) and 60(2) of the **Economic and Organized Crime Control Act Cap 200 RE 2002**.

It has appeared from the testimonies of both sides that the compound of the accused person which comprised two house was subjected into an intensive search on the fatefully date. Nothing was found in the two houses. The searchers turned to the surrounding environments and found a sulphate damped into the pit.

The same was fished out, opened and stuff suspected to be a tusk of an elephant was seen. PW2 who identified himself as a game warden confirmed the seized stuff to be a tusk of an elephant after he had examined it. The two sides agreed further that the tusk was found in the pit which was near the 2nd house that was being used by the tenant of the accused person. It appeared further that the pit was near to the road.

The question to be asked and given an answer is whether the accused person was in possession of the said government trophy. The word possession is not defined in the **Wildlife Conservation Act No. 5 of 2009**. But in **Moses Charles Deo v Rep 1987 TLR 134** the Court defined it as follows:-

(iii) 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;

As it is clearly pointed out in the above quoted paragraph one is said to possess if he exercise some control over the goods or he is aware of their presence. It has appeared from the prosecution witnesses that the tusk of an elephant was found in the compound of the accused person. The said pit was near to the house occupied by the tenant of the accused person. What was the reason of holding that the elephant tusk belonged to the accused person?

Moreover, the pit was near the road; as such there is a possibility of another person to dump it there. The compound of the accused person could easily be accessed by any other person and without the knowledge or consent of the accused person. This court therefore finds the accusations against the accused person not being proved beyond reasonable doubts. It finds him not guilty and acquits him under section 235(1) of the **Criminal Procedures Act Cap 20 RE 2002**.

Sgd.
C.M. Tengwa RM
19/01/2016

Order (1) Exhibit P2 which was previously ordered to be kept by the Katavi National Park should remain to be kept there as ordered.

Sgd.
C.M. Tengwa RM
19/01/2016

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

Sgd.
C.M. Tengwa RM
19/01/2016