

H/C BURUBA

IN THE HIGH COURT OF TANZANIA

AT MTWARA.

CRIMINAL APPEAL NO. 116/2005

ORIGINAL LIWALE D/COURT CRIMINAL CASE No. 1/2001

FARAJI AHMAD @ LIKWACHU - - - - - APPELLANT

VERSUS

THE REPUBLIC - - - - - RESPONDENT

JUDGEMENT

The appellant Faraji Ahmad @ Likwachu was on 30/9/2003 convicted by Liwale District Court in Lindi region on a charge of unauthorized possession of government trophy contrary to section 67(i)(2)(b) r (2A) of the Wildlife conservation Act, 1974 as amended by Act No. 10 of 1989 read together with section 56(1) of the Economic and organized Crimes control Act, 1984 and paragraph 16(d) of the first schedule thereof as amended by Act No. 10 of 1989 and sentenced to thirty years imprisonment.

PWI Bakari Nyambi, is a game Officer working with Selous game Reserve. He told the trial court that on 23/6/2001 at about 4.00 pm received information that there were elephant tusks at Mtawatawa area which were about to be transferred.

PWI informed his boss about the information, and the latter instructed him to make a followup.

PWI in company of PW2 Abbasi Nassoro Mkulunguche, PW3 Muhidini Hamisi Chuma, and one Ally Likenge, moved to Mtawatawa area. They travelled in a motor-vehicle Land cruiser TZJ 3946 arriving at the scene at 5.30 p.m. They stopped the motor-vehicle on the road near a house where an informer had told them that the elephant tusks were stored.

PWI testified that he saw a man standing near the house but when he saw him he ran into the bush. The surrounded the house, and one of them went for a ten-cell leader of the area. Then the appellant came out of the house and before he could run, they arrested him and hand cuffed him.

PW1 testified that he did not know whether the appellant lived in that house, but he failed to mention the owner. The appellant told them that the owner had gone to Kiangara, and also told them that he had gone to Liwale.

Upon the arrival of the ten cell leader, a search was conducted in the house and in one room twenty two elephant tusks, eighty one pieces of elephants and eight tails of elephants were found.

PW1 went on to state that, the ten cell leader told them that the appellant was not the owner of the house and did not stay there but he was surprised to see him there. PW2 had chased the fleeing man at the scene in vain when he came back he found the appellant already arrested.

PW2 replied under cross-examination that there were two huts at the scene, and the elephant tusks were found in one of the huts.

PW4 Gomillas Eleckanda deposed on 23/6/2001, while passing along the road going to a ten cell leader of the area one Mtugila, he was called by two people, one being a game askari called Chuma. They asked her to take them to the ten cell leader and to witness a search. PW4 deposed that the house was searched and twenty two elephant tusks and 81 pieces of elephant tusks and eight tails were recovered.

The owner of the house one Ngolowanje was not present, PW4 testified that the owner had gone to Kiangara.

The case was investigated by PW5 E.934 Detective constable Edward. The elephant tusks were identified by PW6 Kasimu S. Kayoyo, a game officer who gave the value of the trophies as Shs.10,869,000/=.

The appellant had told the trial court in defence that on 22/6/2001 he was going to Kibutuka village.

Darkness caught him at Mtawatawa area, and decided to sleep in a house nearby.

The house belonged to one Kinjimbulumbu. In the morning the said Kinjimbulumbu borrowed his bicycle to go to Kiangara to grind his maize. At 10.a.m a motor-vehicle carried game ~~skins~~ skins arrived. He was

arrested as he came out to find out who had dropped there. The appellant heard them say that "this is the house".

There were two houses at the place, one big and another small.

A ten-cell leader was called, searched and in one of the houses elephant tusks were found.

The ten cell leader and himself were taken to the police station.

There he was beaten up so that he discloses the owner of the elephant tusks. The appellant deposed that he did not know that there was elephant tusks in the said house.

In convicting the appellant the learned trial senior District Magistrate found that there was circumstantial evidence which proved the guilty of the appellant.

He said that the distance from Liwale to Kibutuka is forty miles, hence there was no need to start the journey in the evening.

The appellant was found in the house which he denied to belong to him. The owner of the house ran away with the bicycle belonging to the appellant. The learned trial senior District Magistrate concluded that the appellant and the fugitive offender were together on the elephant tusks project.

The appellant had failed to report his arrival at the village to a ten cell leader of the area. The appellant was arrested while trying to run away.

I have considered the circumstances enumerated by the learned trial senior District Magistrate. In *R. V. Lugalo and others*, (1971) H.C.D. 443, it was held that, If a conviction is to be secured, and if the evidence relied upon is circumstantial, the facts proved must be conclusive in themselves. A mere putting together of separate facts is of no consequence. For an accused person to be found guilty of an offence based on circumstantial evidence, the inculpatory facts must be such as to be incompatible with the innocence of the accused and incapable of any other reasonable explanation than that of the accused guilt.

In the case at hand the fact that the distance from Liwale to Kibutuka is forty miles, apparently from the learned Senior District Magistrate knowledge, as no evidence was adduced to that effect, is not a bar in anyway for any innocent person as well as an offender to start the journey in the evening. Being found in the house where the elephant tusks were found, was explained by the appellant, in my view a reasonable explanation was given.

The appellant's failure to report his arrival at Mtawatawa village to a ten-cell leader, is not necessarily an indication of guiltiness on the part of the appellant. The fashion of making those reports common during single party democracy, has lost the rigor in multiparty democracy.

The issue of the appellant fleeing or attempt to run from the game scouts is not a proof of guilty on his party. Sometimes innocent people run away on seeing policemen or game scouts, believing that the policemen or game scouts were not going to treat they justify.

It follows therefore that the appellant was convicted on insufficient evidence.

I quash the conviction and set aside the sentence of thirty years imprisonment imposed on the appellant.

It is ordered that the appellant shall be released forthwith from prison unless held therein on other lawful charges.



S.B. Lukelelwa

Judge

15/12/2005.

DISTRICT REGISTRAR

MTWARA