

IN THE SUBORDINATE COURT OF THE FIRST CLASS

FOR THE LUSAKA DISTRICT

HOLD AT LUSAKA

(Criminal jurisdiction)



THE PEOPLE versus AGNESS M.PHIRI & BERTHA NGULUBE

BEFORE: HER WORSHIP A.N WALUSIKU

FOR THE PEOPLE: CHISENGA- PUBLIC PROSECUTOR

FOR THE ACCUSED: LIZZIE ZULU-MESSRS LEGAL AID BOARD

J U D G M E N T

Cases cited;

In this case The accused stands charged with one count of UNLAWFUL POSSESSION OF GOVERNMENT TROPHY C/S 97(1)(2) and 129 (1) of the Zambia Wildlife Act No. 14 of 2015 of the Laws of Zambia. The particulars of the offence allege that AGNESS M. PHIRI and BERTHA NGULUBE on 10/02/17 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia jointly and whilst acting together with other persons unknown had in their possession Government Trophy namely dried Buffalo meat weighing 13.2 Kgs without a certificate of ownership as required by law in respect thereof.

The accused pleaded Not Guilty to the charge.

I warn myself from the outset that the burden of proof in criminal proceedings such as the present one lies squarely with the Prosecution. Notwithstanding the defenses available to an accused person, the primary responsibility to prove the allegations against such a person remains with the Prosecution.

The Prosecution in this case is required to prove each ingredient that constitutes the offence as charged beyond reasonable doubt. I must reiterate that proof beyond reasonable doubt is not synonymous with proof beyond any shadow of doubt. In the event of reasonable doubt, such doubt must be decided in favour of the accused and he must be accordingly acquitted.

At this point I wish to analyze the law creating this offence before considering the evidence adduced herein.

Section 97(1) (2) and 129(1) of the Zambia Wildlife Act No. 14 of the Laws of Zambia provides that:

“(1) a person who unlawfully possesses or who purports to buy, sell or otherwise transfer or deal in Government trophy commits an offence”

(2) for the purposes of this section, possession of a trophy by a person without the relevant licence or certificate of ownership in respect of the trophy shall be prima facie evidence of the trophy being a Government trophy and of the unlawful possession of it by the person”

The prosecution therefore must establish that:

1. The accused possessed the meat
2. That the meat was Government Trophy
3. That the accused were not allowed to possess the Government Trophy
4. That the accused did not have the relevant licence or certificate of ownership in respect thereof

Thus the Prosecution has to prove that the accused possessed the meat. That the meat was Government Trophy. That the accused were not allowed to possess it. That the accused had no licence or Certificate of ownership in respect thereof.

I will now consider the evidence in this case. The Prosecution called four witnesses. PW1 was KAMWI KAMWI a Wildlife Police officer. According to him on 10/02/17 he was on duty at Chilanga Offices when he received a report that there were people selling Game meat at Kalingalinga Clinic. Acting on the report they organized themselves and went to the scene. Upon arrival they went to the OPD where they were told the meat was. They sat on the bench near the door. A1 came and entered. A few minutes later they also followed and found the meat on the table and the other meat was in the card box. He asked her as to how much it was and was told that it was K70. He told her that he wanted to buy some and A1 said that she wanted to go and get carrier bags from her friend in the next room. He refused her to go. He came to know A1 as Agness Phiri. GARRISON CHIBANGA a ZAWA officer went to call A2. They asked A2 if they knew each other and she agreed and said that they worked together at the Clinic as Clerks. He asked her whether she knew the business she had. He asked A1 and she said they were selling together the game meat. He asked if they had any document that allowed them to sell game meat and they said that they had nothing. He introduced himself as a Zawa officer. The meat was parked in the card box and were 15 x pieces. They took the meat and the accused to Chilanga. At Chilanga he handed over the suspects to the Arresting officer he identified the accused. He also identified the card box marked P1.

In XN by Def. Counsel he told the court that he received a report of someone selling meat. A person could only sell what belonged to her. At the clinic he saw A1 enter into the room. It was around 1600hrs. He entered and asked to buy the meat. . It was four officers that entered. They were all going to buy the meat. It was not true that when they entered they did not just ask to buy the meat but apprehended them. A1 said was a Clerk at the clinic. A2 was also a clerk. He found 15 bundles of meat. At 1600hrs people were still working. He did not know if people there had meat. He concluded that the meat was Game after he saw it. He knew that it was game meat because of his experience and the smell was different. The smell for game meat differed with that for the domestic animals. The meat was in the room. He did not know that the room that meat was found was not the room the accused operated from. . The meat was not hidden.

He did not ask the accused as to who the meat belonged to. He did not know that the meat was for Chipso. At the clinic he did not ask as to who the owner of the meat was. He did not recall seeing a maid who brought phones for the accused from another office. It was not true that even if there was an explanation, his was to arrest.

In REXN he told court that he apprehended A1 and A2 because he found them with meat.

PW2 was ADRIAN MWEENE a Principal wildlife officer. According to him on 10/02/17 around 1500hrs information was received from the public that there were unknown persons at Kalingalinga Clinic who were selling game meat. They mobilized and went to the scene, at the clinic they were given the description of the person who had game meat and told them the place where the meat was sold at the OPD office. They waited outside on the bench to see the person who was inside. A person of that description came and entered the office. They also entered and said they wanted to buy. That person said it was K70 a piece. A1 said wanted to call the person with plastic bags but she was stopped. They went to call A2 the friend to A1 so that she could bring plastic bags. They identified themselves as ZAWA officers. A1 AND A2 were asked if at all they had a permit to sell and said they had none. They told them to pack the meat and took them to Chilanga office where they handed them over to the arresting officer. He identified both accused. He also identified the cardboard box that had meat marked P1.

In XXN by Counsel he told the court that he did ask people questions on arrest. He did ask the accused as to who the owner of the meat was. The accused said the meat belonged to them. He did not recall the accused saying that the meat was for Chipso. He did not recall that the accused on the way asked them to pass through Kanyama to pick Chipso. He did not recall that a lady brought phones to the accused persons from another office. The phones were taken to the arresting officer. The phones were with ZAWA. He was not there when the phones were confiscated. There were other people around when they left office. He did not recall that someone came and said the meat belonged to her. The accused were Clerks. He did not know if the accused worked from the Registry. The meat was found in the OPD. He saw A1 enter the OPD. He did not ask her if that was her office.

In REXN he told the court that he apprehended A1 because she was in possession of the game meat. They apprehended A1 with A2 whom A1 wanted to call. He only knew the office where the accused were apprehended from.

PW3 was LLOYD KABWELA a Principal Ranger. He had served in the system for 15 years, on 13/02/17 he was approached by PW4 to identify wildlife trophies which were seized from two female suspects. He conducted a physical examination and described the specimen as buffalo meat. He issued an identification certificate. His examination indicated that the hairs that were on the dried meat which were dark or black, the bones that were attached to the meat were the size of cattle or beef. The smell of the specimen and had dried fat. A combination of this led to him to describe it as buffalo meat. He identified the certificate marked P2.

In XXN he told the court that he did not conduct any investigations. He did not know who the owner of the meat was. It was dried meat.

PW4 was MELINA MANJE the Arresting officer in this case based at ZAWA Chilanga Office. On 10/02/17 she was on duty when she was handed over two female suspects by PW2 with 13.2kgs of suspected buffalo meat. She seized the meat and filled in a seizure notice. She then interviewed the suspects. She took the meat for identification and was identified as buffalo meat. Under warn and caution statements in English the language they appeared to understand better, they gave a free and voluntary reply they denied the charge. She made up her mind to charge and arrest them for the subject office. Later the meat was taken to court for disposal which order she identified marked P4. She also identified the seizure notice PW and the box P2. She identified A1 and A2.

In XXN she told the court that ^{she} ~~he~~ did conduct investigations. She did not know which office the buffalo meat was found. She did not know which office the accused operated from. The accused did tell her about Chipso. A1 did not tell her that the meat was for Chipso. She recorded the warn and caution statement. They told her that Chipso was the one that took the meat for them to sell. The meat belonged to the one who was found in possession. P2 was the box that had meat.

The accused were put on defence. They chose to give sworn evidence and called no witnesses. According to DW1 on 10/02/17 she was at work at Kalingalinga Clinic when Chipso came to the

Registry where she was with A1 and came with a box and told her to keep for her and that she would be back. She took her to the VCT office and told her to keep it there. At that time she was not aware as to what was in the box. After 1600hrs a lady came and asked for Agness and said that she had been sent by Chipu to collect the game meat. She then called Chipu to ask who agreed and that it was game meat and had a licence to sell. She took the lady to the VCT office and the lady opened the sealed box and counted the meat. Then the lady left to call someone to help her to carry. As they were waiting for the lady, 3 men came and asked as to what was on the table and she told him that it was game meat. She was asked of a licence and she said the meat was not hers but for Chipu. They were taken to Chilanga. She denied to have sold the meat.

In XXN she told the court that she worked at Kalingalinga Clinic. The meat was brought by Chipu. It was a box that she brought. She did not open the box. She kept the box because it was not strange for her. She came to know what was inside after she called Chipu when someone came to collect. She was not waiting for a buyer but knocking off time. She gave the lady who came the meat after Chipu called.

According to DW2 on 10/02/17 around 1000hrs Chipu came with a box and asked them to keep for her. A1 went to put it in the next office. After 1600hrs a lady came and asked for A1 and said that she was sent by Chipu to collect the box that Chipu left and that there was game meat. A1 inquired from Chipu on phone and she was told to release it. A1 went to the next office and she followed him so that they could knock off. A1 told her that she was waiting for the lady who had gone to call someone to help her carry. Whilst there three officers came and asked as to what was in the box. A1 told them that it was game meat. When she wanted to go out she was stopped and they were told that they were ZAWA officers. They were taken to Chilanga and detained. A2 just followed to knock off.

In XXN she told the court that that day Chipu brought a box. She went to the office where the meat was at last. She denied to have ever been asked on the plastics. When Chipu came it was A1 that took her to the office, she saw the meat at last when she went to call A1. Chipu did not tell them to sell but to keep.

This is the evidence that I received.

I now state my findings of fact. I find that at Kalingalinga Clinic was game meat. I find that the meat was Government Trophy. I find that A1 was in possession of the said Government Trophy. I find that A1 had no licence or certificate of ownership to that effect. I find that her possession was unlawful

Having found the facts I must now apply the law to those facts. I ask myself if on these facts the accused have committed the offence charged.

Turning to the count, if the accused acted in the way alleged then certainly they will be guilty of the offence charged. But has the prosecution established beyond reasonable doubt that they unlawfully possessed the said Government Trophy?

What evidence is there that they possessed the said trophy? At this stage I will deal with each individual separately.

For A1 she is the one that went into an office where the meat was. A1 had the keys to that office showing that she had control of the things in that office. When she was inside, she was followed by the ZAWA officers and meat was found spread there. It was A1 who was asked how much she was selling and she said K70. This shows that she was the owner or was incharge of the said Game meat. When asked if she had any certificate of ownership she did not have any. A1 told court that the meat was brought by Chipso for safe keeping. However, A1 was found in possession and Chipso was nowhere to be seen. The accused was released on Police bond and failed to avail Chipso to the officers so that she could show that the meat belonged to Chipso. To say that the meat belonged to Chipso is just a speculation as that Chipso does not exist.

I have no defences for A1.

IN LIGHT OF THE ABOVE I FIND THE CASE of Unlawful possession of Government Trophy C/S 97(1) (2) as read with Section 129(1) of the Zambia Wildlife Act No 14 of 2015 of the Laws of Zambia proved beyond reasonable doubt. I find A1 Guilty and I convict her accordingly.

For A2 she was not found with A1 in the same office where the meat was. She was just called by the ZAWA officers when A1 wanted plastic bags to be brought by her. Further it was A1 who received that meat from an unknown person and it was A1 who was wanted by an unknown

lady who came to collect the contraband. This just shows that A2 was nowhere in the deal. Even ZAWA officers had to connect A2 to the case just because she was required by A1.

I Have difficulties in connecting A2 to the offence.

In light of the above I find the case of Unlawful possession of Government Trophy C/S 97(1) (2) as read with Section 129(1) of the Zambia Wildlife Act No 14 of 2015 of the Laws of Zambia Not proved beyond reasonable doubt. I find A2 Not Guilty and I acquit her accordingly.

DELIVERED IN OPEN COURT THIS...10th...DAY OF...OCT...2017



HON A.N WALUSIKU

