REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

CRIMINAL APPEAL NO 45 OF 2018

JACKSON LOWOLO LOPEITON.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

Appeal from original Conviction and Sentence in Nanyuki CM

Criminal Case No 302 of 2016 – E Ngigi, SRM)

J U D G M E N T

1. The Appellant herein, **JACKSON LOWOLO LOPEITON**, was convicted after trial in count 2 of the offence of ***being in possession of a wildlife trophy*** contrary to **section 95** of the ***Wildlife (Conservation and Management) Act, 2013***. It was alleged in the particulars of the offence that on 12/03/2016 at around 13.00 hours at Maxoil Hotel in Nanyuki Town, jointly with others not before court, he was found in possession of a wildlife trophy, namely one piece of rhino horn weighing 85 grammes with a street value of KShs 2 million, without a permit.

2. On 23/08/2018 the Appellant was sentenced to five (5) years imprisonment. He appealed against both conviction and sentence.

3. The Appellant was acquitted of the offence in Count I where he was charged that on the same date, time and place he was found dealing with the same piece of rhino horn. The trial court held that there was no proper and adequate evidence that the Appellant was found dealing with the horn.

4. It was argued by the Appellant through his learned counsels that the charges in the two counts in the charge sheet were duplex to each other. I find no such duplicity at all. In count I the offence charged was ***dealing with the horn*** contrary to section 84(1) of the Act. **Dealing** with the horn in the context of the offence meant taking part in commercial trading of the horn, like buying and selling it. On the other hand, the offence charged in count 2 was ***being in possession of the horn without the necessary permit*** contrary to section 95 of the Act.

5. The two offences of **dealing with** and **being in illegal possession of** the same rhino horn at the same place and time were separate and distinct offences charged as such in separate counts. There was no duplicity.

6. The other complaints of the Appellant were that it was not proved beyond reasonable doubt the horn in the charge was indeed a rhino horn; that in any case the necessary unbroken chain of possession of the exhibit was not established and that therefore the possibility could not be eliminated that a different horn was examined by the expert witness; and that it was not proved beyond reasonable doubt that the Appellant did not have a permit for the horn.

7. This being a first appeal, it is the duty of this court to examine and evaluate the evidence tendered, and arrive at its own conclusions regarding the same. I have borne in mind however, that I neither saw nor heard the witness myself, and I have given due allowance for that fact.

8. The prosecution having proved beyond reasonable doubt that the Appellant was found in possession of the rhino horn, it was upon him to produce a permit for his possession of it, if he had one. He had the necessary opportunity to do this not only at his arrest, but also in the course of the trial, if indeed he had a permit. He never produced any.

9. An expert forensically examined the horn and established that it was indeed a rhino horn. A challenge from the bar of the methodology he used, without calling a different expert, was not sufficient to discredit him.

10. It was also established by evidence that the expert received the exhibit duly accompanied by the usual exhibit memo form. There was no indication of any break in the chain of possession.

11. Upon my own evaluation of the evidence, the Appellant was convicted in count 2 upon good and sound evidence. The conviction is safe. There is no merit in the appeal.

12. As for the sentence, the same was lawful and indeed the minimum permitted by law.

13. This appeal is hereby dismissed in its entirety for want of merit. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 14TH DAY OF SEPTEMBER 2021

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 7TH DAY OF OCTOBER 2021