

IN THE HIGH COURT FOR ZAMBIA
HOLDEN AT CHIPATA
(Criminal Jurisdiction)

HJA/14/2012

BETWEEN:

PATRICK LUNGU

Versus

THE PEOPLE

Before the Hon. Mr. Justice Justin Chashi on the 19th day of October, 2012.

For the Appellant: F S Jere, Messrs Ferd Jere & Company
For the State: N T Mumba (Ms) Senior State Advocate

J U D G M E N T

Cases referred to:

1. *The People v Kapalu Kanguya (1979) ZR 288*

Statutes referred to:

2. *The Zambia Wildlife Act, 1998.*

Other works referred to:

3. *Blacks Law Dictionary, Bryan A Garner, 8th edition*

This is an appeal by the Appellant namely Patrick Lungu against the conviction on his own admission by the Magistrate of the Subordinate Court of the first class sitting at Petauke.

In this Judgement, I shall refer to the Appellant as the 2nd Accused for that is what he was in the Court below.

The appeal herein is only against conviction as no ground against sentence was filed, neither did Counsel for the Appellant make any submission as against sentence.

At the hearing of the Appeal, Counsel for the Appellant submitted that the 2nd Accused was jointly charged in the Court below with the 1st and 3rd Accused persons with five (5) Counts. The trial Magistrate entered a plea of not guilty on counts 1, 2 and 3 against all the Accused persons and a plea of guilty on counts 4 and 5 for all the Accused persons.

The trial Magistrate convicted all the Accused persons on their own admission on the fourth count and sentenced each one of them to four (4) years Imprisonment with Hard Labour with effect from the date of arrest. On the fifth count, all the Accused persons were convicted on their own admission and sentenced to two (2) years Imprisonment with Hard Labour. The two sentences were to run concurrently.

According to Counsel for the 2nd Accused the main Ground of Appeal is that the pleas of guilty were not properly entered on the two counts as the pleas were equivocal. Counsel submitted that the law requires that when taking a plea, the Court must put forward to the Accused person all the ingredients of that offence and that the Accused must admit all the ingredients of the offence.

Counsel further submitted that the ingredients in the fourth count are straight forward in that there must be **hunting without** a licence or permit from the Director General.

Counsel contended that all the ingredients of the offence were not put forward. That from the answers which were given by the 2nd Accused in

response to what the Magistrate asked, it is clear that the Magistrate did not put across all the ingredients of the offence to the Accused.

According to Counsel, the Magistrate should have asked the Appellant whether he had a permit or a licence issued by the Director General. That, putting the term permit only and leaving licence was confusing to the 2nd Accused who was not represented. That had the Magistrate asked if the 2nd Accused had a licence, he would have answered in the affirmative and a plea of not guilty would have been entered.

Counsel in furthering his submission relied on the case of **THE PEOPLE V KAPALU KANGUYA**¹ where the High Court held as follows”

“I. The plea was equivocal, the Accused being unrepresented the Magistrate before accepting a plea of guilty should have satisfied himself that the Accused admitted each and every ingredient of the offence with which he was charged.

(II). Admitting the facts does not validate an equivocal or imperfect plea.”

It was Counsel’s contention that the holding in the aforestated case equally applies to the case in **CASU**.

On the basis of the aforestated submissions, Counsel urged the Court to allow the Appeal and acquit the 2nd Accused.

In response, Counsel for the State submitted that she supported the conviction as the plea was unequivocal and therefore the Magistrate was on firm ground when he entered a plea of guilty. That it is clear from the record that the Magistrate put to the 2nd Accused the necessary questions following the ingredients of the offence. That the answers by the 2nd

Accused in admitting the offences clearly demonstrate that the Court had put to the 2nd Accused the necessary ingredients of the offence.

It was Counsel's submission that although the record does not show that the word licence was used, in common usage the words permit and licence can be used **inter changeably**. As such there was no confusion nor prejudice occasioned to the 2nd Accused by the entering of the plea of guilty.

It was Counsels contention that the use of the word licence would not have changed anything as the 2nd Accused was alive to the necessity of having permission to hunt and that knowledge was confirmed after all the ingredients were put forward before the plea was entered.

Counsel for the State urged the Court to confirm the convictions.

In reply, Counsel for the 2nd Accused submitted that Counsel for the State has conceded that the word licence was not used and re contended that the word would have changed the all scenario.

According to Counsel, it is interesting to note that in all the counts where the 2nd Accused was acquitted, he said they had a licence.

I have carefully analysed the submissions by Counsel for the 2nd Accused and those of the State in response. I have also had occasion to peruse the record from the Court below and the provisions of the **Zambia Wildlife Act**² under which the 2nd Accused was convicted.

If I understand Counsel for the 2nd Accused, he is saying that by the trial Magistrate omitting to use the word licence prior to the 2nd Accused taking the plea, the ingredients of the offence on count four and five were not fully put to the 2nd Accused and therefore his plea of guilty should not have been entered as it was equivocal.

On the other hand, the submission of the State is that despite the word licence, not being used, its use would not have changed the situation as the full ingredients of the offence were clearly put to the 2nd Accused and further that in any case, in common usage, the words permit and licence can be used interchangeably.

BRIAN A GARNER, in **BLACK'S LAW DICTIONARY** on page 938 defines licence as:

- "1. A permission to commit some act that would otherwise be unlawful.***
- 2. The Certificate or document evidencing such permission."***

The author goes on to define a permit on page 1176 as:

"A Certificate evidencing permission, a licence."

Indeed from the aforesaid definitions, the words licence and permit are commonly interchangeable.

However perhaps the bone of contention by Counsel for the 2nd Accused is that, since the 2nd Accused was not represented, the word licence ought to specifically have been used.

A perusal of the indictment shows that the word licence was used in the particulars of the offence.

The **fourth count reads** as follows:

" STATEMENT OF OFFENCE: Hunting during hours of darkness Contrary to Section 76 (1)(a)(b) Act 12 of the Laws of Zambia.

PARTICULARS OF THE OFFENCE: John Mumba, Patrick Lungu and Joseph Phiri on the 20th day of October 2011 at Petauke jointly and

whilst acting together did hunt during the hours of darkness, game animals namely one grysbok and two bush bucks without a licence or permit issued by the Director General of the Zambia Wildlife in respect thereof."

The **fifth count reads** as follows:

"STATEMENT OF ACCOUNTS: *Unlawful possession of Government trophy Contrary to Section 100 and 135 of the Zambia Wildlife Act 12 of the Laws of Zambia.*

"PARTICULARS OF THE OFFENCE: *John Mumba, Patrick Lungu and Joseph Phiri on the 20th day of October 2011 at Petauke jointly and whilst acting together did possess Government trophy namely One carcass of Grysbok meat weighing 7kgs and 2 carcasses of Bush buck meat weighing 38kilogrammes attached to it without certificate of ownership issued by the Director General of the Zambia Wildlife authority in respect thereof licence or permit."*

These are the statements and particulars of the offences on count 4 and 5 which were read to the 2nd Accused and to which his responses as shown on page 2 of the record are as follows:

Count 4:

"A2. I understand the charge. I admit the charge. I did hunt during the hours of darkness in the company of A1 and A3. We had no permit to hunt during that time."

Count 5:

“A2. I understand the charge. I admit the charge, we had 3 carcasses in question. I was in the company of A1 and A3. We had no certificate of ownership.”

It is evidently clear from the aforestated, in particular, the statement and particulars of the offence that the full ingredients of the offence were put forward to the 2nd Accused and the 2nd Accused unequivocally pleaded guilty to the two offences. The word licence was used in the particulars of both offences.

Therefore, the contention by Counsel for the 2nd Accused that the word licence was not used is untenable and an attempt to mislead the Court.

Furthermore, a careful look at both Sections 76 and 100 of the Zambia Wildlife Act under which the 2nd Accused was convicted does not contain the word licence as an ingredient.

Section 76 states as follows”

“(1) Except with the written permission of the Director General any person who during the hours of darkness:

(a) Hunts any wild animal or

(b) For the purpose of or in connection with hunting or assisting in hunting any wild animal uses any torch flare, lamp of the type known as “Bulala lamp” or any other artificial light:

Shall be guilty of an offence.”

Section 100 which relates to the fifth count reads as follows:

“(1). Any person who unlawfully possesses or who purports to buy, sell or otherwise transfer or deal in any Government trophy shall be guilty of an offence.

(2) For purposes of this Section possession of any trophy by any person without a Certificate of Ownership in respect of the trophy shall be prima facie evidence of the trophy being a Government trophy and of unlawful possession of it by the person."

I do not find any requisite of a licence being an ingredient either express or implied in the aforestated Sections.

In the view that I take, **the Appeal by the 2nd Accused has no merits and it is therefore DISMISSED.**

As there is no appeal before me, in respect of the sentence, I shall not interfere with the same.

Delivered at Chipata this 19th day of October, 2012.

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Justin Chashi
HIGH COURT JUDGE