

JOEL GARIKAI GOMBA

And

BAHATI MDUDUZI MOYO

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
NDOU AND CHEDA JJ
BULAWAYO 13 AND 7 OCTOBER 2010

J Sibanda for appellants
K Ndlovu for the respondent

Criminal Appeal

NDOU J: The appellants appealed against sentence imposed by a Bulawayo regional Magistrate. We dismissed the appeal and indicated that our reasons for doing so will follow. These are they. The background facts are the following. The appellants were convicted on their own pleas of the unlawful possession of raw ivory in contravention of section 82(1) of Statutory Instrument 362/1990 as read with section 128(b)(i) of the Parks and Wild Life Act [Chapter 20:14]. They were each sentenced to a fine of US\$5 000,00 or in default of payment 2 years imprisonment. In addition they were each sentenced to 2 years imprisonment wholly suspended for 5 years on the customary conditions of future good behavior.

The facts reveal that on 23 February 2009, the appellants, in company of three other accomplices, connived to commit the offence. They left Hwange in a Nissan motor vehicle belonging to one of them. Their destination was Binga. In Binga, quite a long distance from Hwange, they unlawfully acquired a total of seventeen (17) unmarked i.e elephant tusks. They took the ivory back to Hwange town. They embarked on selling these tusks. Lady luck was not smiling at them. They unknowingly tried to sell the ivory to detectives from the Criminal Investigation Department, Minerals Section. They were arrested. In the circumstances, the detection of the crime was not as result of change of heart on the part of the appellants but it was as a result of police effort. It is common knowledge that poaching in general is very rife in Matabeleland North.

Notwithstanding their size and stature, elephants have not been spared by poachers. Admittedly, there is no evidence that the appellant killed the elephants that produced the

seventeen tusks, but they provided ready market for such wanton killing of wild animals. Their moral blameworthiness is not that different from the poachers themselves. To produce a total of seventeen tusks, there must have been at least nine elephants killed by the poachers. The appellants and their accomplices organized themselves into a gang of five which travelled well over one hundred (100) kilometers to commit this offence.

In our view, if the learned trial Regional magistrate erred, it is on the side of leniency. But the trial court exercised its sentencing discretion. We find no legal justification to interfere with the sentence – *S v Ramushu* SC-25-93 and *S v Nhumwa* SC-40-88. It is for the above reasons that we dismiss the appeal against sentence.

Cheda J I agree