

THE STATE

Versus

FANUEL PHIRI

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 25 FEBRUARY 2010

Criminal Review

NDOU J: The accused was convicted by a Bulawayo magistrate of unlawfully possessing animal trophy without a licence in contravention of section 46 (b) of the Parks and Wild Life Act [Chapter 20:14]. He had in his possession a total of thirteen (13) pairs of impala horns. The matter was referred to me for review by the learned scrutinizing Regional Magistrate who is concerned about the propriety of the sentence. He feels that the sentence imposed is lenient. I am in agreement with the learned Regional Magistrate that the sentence imposed is manifestly lenient. The accused was in possession of a large quantity of impala horns and it can be safely inferred that this was for commercial purposes. This involves a mass slaughter of animals by poachers. The accused resides on the farm designated for resettlement. He must have appreciated that such depredation will lead to the extermination of the animals. A sentence of 9 months all of which is suspended on appropriate conditions imposed here will encourage large scale poaching. For the land reform programme to succeed in places like Matabeleland North, the new settlers themselves should be in the forefront in the battle against poaching and not to become poachers or facilitators of poaching activities.

Be that as it may, the issue of sentence *in casu*, is rendered academic as the conviction itself cannot stand. This is so because section 46 (b) does not create an offence. It deals with the Minister's powers to issue permits, "to keep, have in his possession or sell any specially protected animal or the meat or trophy of any such animal." An impala is not a specially protected animal as defined in section 43 of the Act. All specially protected animals are specified in the Sixth Schedule, and impala is not specified therein.

The accused, should have been charged either under section 33 (if the area in question is a sanctuary) or under section 38 (if the area is a safari area). The trial record does not state whether the area in question is a sanctuary or a safari area. From the foregoing, the conviction cannot stand.

Judgment No. HB 7/10
Case No. HC 250/10
CRB 3396/08

Accordingly, the conviction is quashed and the sentence set aside. A trial de novo is hereby ordered before a different magistrate.

Ndou J

Cheda J I agree