

Appeal Against 'SADC Poaching Ringleader' Stalls

Monday, September 13, 2021 | 520 Views |



Lebogang Mosikare

[Share](#)[Tweet](#) [Share](#) [Email](#) [sms](#)

FRANCISTOWN: It is more than two years since the state successfully appealed the case of the alleged SADC poaching ringleader, Dumisani Moyo, on urgency but has not acted on the appeal thereafter.

In May 2019, Magistrate Lebogang Kebeetsweng acquitted and discharged Moyo of allegedly unlawfully being found in possession of a rhinoceros horn contrary to Section 70 of the Wildlife Conservation and National Parks Act. According to the particulars of the offence, Moyo together with Goodwill Mabaiwa and others acting together and in concert were found in possession of a rhinoceros horn without a licence or permit to possess the same on October 22, 2012, at or near Francistown. The maximum penalty of being unlawfully found in possession of a government trophy (rhino horn) is a fine of P100,000 and imprisonment of 15 years or both.

Moyo fled the country after he was granted bail late in October 2012. On July 4, 2019, Justice Matlhogonolo Phuthago ruled in favour of the Directorate of Public Prosecutions (DPP) saying that when Kebeetsweng delivered the ruling in the matter at the Magistrate Court, she was a Grade III Magistrate. The DPP premised its appeal on the basis that Kebeetsweng did not have both the trial and sentencing jurisdictions to preside over the matter. Said Phuthago then: "Section 61 (1) of the Magistrates' Court Act puts the limit of punishment for a Grade III Magistrate at five years imprisonment or a P10,000 fine or both. Section 70 of the Wildlife Conservation and National Parks Act under which the respondent is charged attracts a fine of P100,000 and a prison term of 15 years... therefore the trial magistrate did not have jurisdiction to preside over the matter... On that account, I hold the view that the DPP has reasonable prospects of success." Justice Phuthago then said Moyo had adopted a simplistic approach that since he has been acquitted and discharged by the lower court, and is therefore no longer an accused person, there is no basis for the state to continue holding onto his passport and bail money. "It is noteworthy that the issue of whether Moyo was properly acquitted and discharged by the lower court is still pending before this court. On the premises, the application by DPP succeeds. The respondent's bail conditions that were imposed by the Magistrate's Court (that Moyo's passport remains in the custody of the police and that he shall not be given his bail pending the finalisation of the matter) shall remain unchanged," Phuthago ordered.

Justice Phuthago was also of the view that if Moyo is given his passport back, he will disappear from Botswana and thereafter no court in Botswana will have the power to effectively decide his fate. "Even if the respondent decides to stay in a country that has an extradition treaty with Botswana, there would be no guarantee that if it becomes necessary for the DPP to extradite him to Botswana, the DPP will be successful. In a matter of an application for extradition, the requesting state is always at the mercy of the requested state's courts.

An extradition process is itself a tedious and expensive process. Extradition documents have to go through a chain of diplomatic channels from the requesting state to the requested state and vice versa," said Phuthago.

However, more than two years after the DPP successfully appealed Moyo's acquittal and discharge on urgency at the High Court, the DPP has not proceeded to appeal Kebeetsweng's ruling. This means that Moyo, who rents a house in Francistown, is somehow prejudiced by his perpetual stay in Botswana because he cannot return to Zimbabwe where he originates since the police are keeping his passport. Moyo's attorney Kagiso Jani said they are keeping their options open and may approach the court on the urgency to get Moyo's passport so that he can return to Zimbabwe since it is clear that the state has no intention of prosecuting the matter any further. Jani explained that since the DPP approached the High Court on urgency, it should have long appealed

Kebeetsweng's ruling with the same zeal it adopted during its application before Justice Phuthego. According to Jani, if push comes to a shove, he will apply for the DPP's case to be dismissed for want of prosecution.

According to a study entitled 'Beyond Borders: Crime, conservation and criminal networks in illicit rhino horn trade' that was carried out by the Global Initiative against Transactional Organised Crime, Moyo is a holder of both Zimbabwe and Zambia passports. The study says that Moyo is one of Southern Africa's most notorious poaching ringleaders. Believed to be on the run in Zambia, he has been linked to elephant poaching, ivory smuggling and 'dozens of rhino killings' over the past decade. Interpol has issued an international 'red notice' calling for his arrest. Moyo was born in the town of Shurugwe in Zimbabwe's Midlands province, 350km from the capital Harare, according to the study.