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SA man cleared of rhino horn possession charges

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 SA man cleared of rhino horn possession charges

Fidelis Munyoro Chief Court Reporter

A South African immigrant Brent Johan Lunt was yesterday acquitted on charges involving possession of four rhino horns worth US\$240 000 without a licence after the High Court found merit in his application for review of the trial court proceedings that put him on his defence even though the horns had not been proved to be from an African species of rhino.

Lunt (40) was charged along with Nyasha Mutendawafa (31) for allegedly violating the provisions of the Parks and Wildlife Act after they were allegedly found in possession of the rhino horns without authority.

Lunt approached the High Court seeking review of the decision by trial magistrate Ms Barbara Mateko dismissing his application for discharge at the close of the State case.

A superior court will only interfere in un-terminated proceedings of a lower court in exceptional circumstances of gross irregularity or where not to do so may result in grave injustice.

In this case, during trial, the magistrate refused to acquit Lunt at the close of the State case, despite making a finding that the prosecution had failed to prove the essential elements of the crime, in particular that the four horns came from one of the two species of African rhinos, the only two that are specially protected in Zimbabwean law.

There was no evidence to prove that the trophies were from a black or square lipped rhinoceros which are the specially protected species of rhinoceros in terms of the Parks and Wildlife Act, but the trial magistrate went on to exercise a discretion which apparently does not exist by putting Lunt to his defence.

The State could not oppose the application by Lunt, conceding that the merits of the application and substantive aspects of the law for the matter had already been decided by the same court in the case of his co-accused, Mutendawafa.

In a judgment delivered yesterday, Justice Samuel Deme ruled that if the prosecution failed to prove that the horns were that of the rhinoceros, “one wonders what could be the magistrate’s basis for believing that prosecution had established a prima facie case warranting to put accused to his defence”.

Justice Deme ruled that once satisfied that the State had failed to prove essential elements of the crime, the magistrate should have discharged Lunt at the close of the State case.

Mutendawafa successfully challenged the decision of the trial court on similar grounds in February this year, and Justice Deme associated himself with the court’s findings in the case of Mutendawafa.

He said the facts in the present case could not be distinguished from the case of Mutendawafa.

Their trial commenced before Harare magistrate Ms Mateko and the prosecution led evidence from all its witnesses, but failed to prove the elements of the offence.

But the trial magistrate without justification went on to conclude that a prima facie case was established and threw out the duo's application for discharge at the close of the State case.

In the case of Mutendawafa in February this year, Justice Jacob Manzungu noted that the offence under which the duo was charged consists of two elements, that is possession, and a trophy of a specially protected animal.

In this case, the rhinoceros that are protected by the law are the two African species, the black rhino, *diceros bicornis*, and the square-lipped, *ceratotherium simum*. This specific definition including only African rhinos excluded any other type of rhinoceros from the bracket of specially protected animals.

It was on this basis that Justice Manzungu ruled that it was the duty of the State to prove possession of a trophy of a specially protected animal.

After identifying the essential elements of the offence against which the State had a duty to prove and found that the prosecution evidence was marred with inconsistencies, Justice Manzungu said the trial magistrate abruptly, without any justifiable cause, concluded that a prima facie case was established.

Charges against the duo arose on July 2 last year, when detectives from CID Minerals, Flora and Fauna, Harare, were tipped that Lunt and Mutendawafa were in possession of rhino horns, which they intended to sell in Msasa.

It is alleged the informer indicated that the duo was moving around in a white Toyota Mark X and the detectives swiftly proceeded to Msasa, where they spotted the car driving along Mutare Road.

The detectives allegedly followed the vehicle, driven by Mutendawafa with Lunt sitting in the front passenger seat.

The detectives allegedly blocked the vehicle, which pulled off the road and stopped.

The trial court also heard that the detectives identified themselves and requested to search the duo and their vehicle.

The court heard that Lunt had a blue bag and a laptop on his lap. The detectives allegedly searched the bag and found four rhino horns inside.

They also searched the accused persons and the vehicle, but nothing was found. The accused persons were asked to produce documents authorising them to be in possession of the rhino horns and they failed, leading to their arrest.

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