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/ CRIME & COURTS

Two acquitted after being nabbed with rhino horns pieces

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Fidelis Munyoro

A South African immigrant and a local man found in possession of four pieces of rhino horns worth US\$240 000 without a licence have been acquitted after the High Court found that the prosecution failed to prove its case against them.

Nyasha Mutendawafa (29) was arrested along with Brent Johan Lunt (38) on charges of violating the provisions of the Parks and Wildlife Act after they were found in possession of the pieces of rhino horns without authority.

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

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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.

Through their lawyer, Advocate Tafadzwa Mapuranga, Mutendawafa challenged the trial magistrate decision at the High Court seeking a review to quash the ruling dismissing the application for discharge at the close of the State case and placing them on their defence.

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

In the present case, Justice Jacob Manzunzu noted that the offence under which the duo was charged consists of two elements, that is possession, and (of) a trophy of a specially protected animal.

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In this case, the Rhinoceros that are protected by the law are Black—diceros bicornis and Square-lipped – ceratotherium simum and thus specific definition excluded any other type of rhinoceros if any from the bracket of specially protected animal.

It was on this basis that Justice Manzunzu 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 Manzunzu said the trial magistrate abruptly without any justifiable cause concluded that a prima facie case was established.

“The conclusion is contrary to the requirements as laid down requirements. This is one of those rare cases, in my view where the application must succeed and rightly so,” said Justice Manzunzu setting aside the lower court's decision and acquitted the duo of the charges.

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

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

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The detectives allegedly followed the vehicle, with Mutendawafa driving, while Lunt was sitting in the front passenger seat. The detectives allegedly blocked the accused person's vehicle, which pulled off the road and stopped.

The trial court also heard that 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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