

**IN THE REGIONAL DIVISION OF GAUTENG
HELD AT KEMPTONPARK**

CASE NO:

THE STATE

vs

CHUMLONG LEMTHONGTHAI

ACCUSED 1

PUNPITAK CHUNCHOM

ACCUSED 2

MARNUS STEYL

ACCUSED 3

TOOL SRITON

ACCUSED 4

HARRY CLAASSENS

ACCUSED 5

PATRICK MATTHYS

ACCUSED 6

OUBENE FRANK KOBEA

ACCUSED 7

Hereinafter referred to as the accused

CHARGE SHEET

PREAMBLE TO THE CHARGE SHEET

A. FACTS RELEVANT TO THE CHARGES.

1. The accused 1 is a 43 year old male person with passport number X 869280 of Thai nationality.
2. The accused 1 is the director of a Thai company with the name Xaysavang Trading Export-Import, Bolikhamxay Province Thailand.
3. Accused 2 is a 45 year old male person with passport number S 813579 of Thai nationality.
4. Accused 2 was employed by a Thai company with the name Xaysavang Trading Export-Import, Bolikhamxay Province Thailand.
5. Accused 4 was also employed by Xaysavang Trading Export-Import.
6. The company deals in the trade of rhino horn and lion bones, teeth and claws.

7. The accused were instructing the export of rhino horns as indicated in count 1 to 26.
8. Permits were obtained for these rhino horns under the pretence that it was meant for trophy purposes, whilst the purpose was for trade.
9. The conditions of these permits were not complied with.
10. The accused paid the shipper Air and Sea Trophy Exports in cash with accompanied instructions.
11. The accused made improper use of airway bills and/or SAD 500 (Custom declaration forms) by instructing that inter alia the consignee should be changed and/or to change the country of destination contrary to the CITES permit issued for the rhino horn.
12. Accused 3 supplied Rhino to the company and arranged the hunt of rhino, the removal of the rhino horn, the weighing of the rhino horn and the ultimate removal thereof.
13. Accused 6 and 7 were employed by accused 3 in respect of these hunts.
14. Accused 5 acted as the professional hunter that had to accompany the hunt and had to make sure that the conditions of the permit were adhered to.
15. The accused acted with a common purpose and in concert with each other in respect of the trade in rhino horn.

COUNT 1-26

THAT the accused are guilty of contravening Section 80 (1) (i) of the Customs and Excise Act, 91 of 1964

IN THAT upon or about as per column 1 of Schedule A and at or near OR
Tambo International Airport in the Regional Division of Gauteng,
The said accused did unlawfully and intentionally made improper use of
documents issued as per column 1 and column 3 of Schedule A in respect of
goods to which the Customs and Excise Act relates to wit export of rhino horn.

FIRST ALTERNATIVE TO COUNT 1-26

THAT the accused are guilty of contravening section 83(a) of the Customs and Excise Act, Act 91 of 1964 read with section 15(1)(b)(iii) of Act 91 of 1964.

IN THAT on or about as per column 1 of Schedule A and at or near OR
Tambo Airport in the Regional Division of Gauteng,
the said accused, dealt or assisted in dealing with any goods contrary to the
provisions of this Act, namely section 15(1)(b) of the Customs and Excise
Act 91 of 1964, to wit
Rhino horn contrary to the CITES permits issued as per column 3 of Schedule
A.

SECOND ALTERNATIVE TO COUNT 1-26

THAT the accused are guilty of contravening section 84(1) of the Customs and Excise Act, No. 91 of 1964.

IN THAT on or about/during the period as per column 1 of Schedule A and at or near OR Tambo Airport in the Regional Division of Gauteng, the said accused made a false statement in connection with any matter dealt with in this Act, or made use for the purposes of this Act of a declaration or a document containing any such statement, to wit Airway Bill as per column 1 of Schedule A and/or Cites permit as per column 2 of Schedule A and/or SAD 500 as per column 3 of Schedule A.

COUNT 27-52

That the accused are guilty of a contravention of **Section 57 (1)**, and to be read with **Section 1;56(1); 57(2); 97(1); 98(2); 101(1); 102** of the National Environmental Management: Biodiversity Act 10 of 2004 and Chapter 7 of NEMBA, and further read with Regulation **150, 151 en 152** published in Government Gazette 29657 on 23 February 2007 also Regulation **148** published in Government Gazette 31899 on 13 February 2009 and also read with Schedule 1 of the Prevention of Organised Crime Act, 121 of 1998 and also read with Section **250** of the Criminal Procedure Act 51 of 1977

IN THAT on or about the dates as per column 1 of Schedule A and at or near O R TAMBO AIRPORT in the Regional Division of Gauteng the accused unlawfully and intentionally carried out a restricted activity involving a specimen of a threatened or protected species to wit, traded in, Rhino horns being a listed threatened or protected species without the necessary **TOPS** permits to authorize the trade of the products, and/or hunting and/or killing and/ or exporting Rhino, contrary to the conditions of a permit and/or with an invalid permit.

Penalty provision: Maximum fine of R10 million, or a fine equal to three times the commercial value of the specimen of the listed threatened or protected species in respect of which the offence was committed, whichever is the greater, and/or imprisonment of ten(10) years.

Other relevant provisions:

Section 34(5)-(11), read with Schedule 3, of the National Environmental Management Act, 107 of 1998 (liability of employers, directors, managers, agents and employee)

Alternative to COUNT 27-52

THAT THE ACCUSED ARE GUILTY OF FRAUD. (read with the provisions of section 51(2) Act 105 of 1997.)

IN THAT on or about the period/s mentioned in column 2 of Schedule A and at or near Gauteng, in the Regional Division of Gauteng, the accused did unlawfully and with the intention to defraud, gave out and misrepresented to the Department of Environmental Affairs and/ or the employees of Department of Environmental Affairs (hereinafter referred to as the complainant) that,:

The purpose of an application for the hunting of rhino as per column 2 of Schedule A was true and correct, in that, it was for a personal sport hunted trophy of rhino.

And did then and there cause, with the said false pretences the said complainant to accept and believe the correctness of the information in the application submitted by the accused, and therefore caused prejudice actual or potential to the said complainant.

Whereas in truth and in fact when the accused gave out and pretended to the said complainant as mentioned, knew that the information on the application was not true and correct,

In that the accused were not entitled to any permit for the hunting of rhino as per column 1-4 of Schedule A, where the purpose is to trade in rhino horn.

Therefore the accused are guilty of FRAUD.

COUNT 53-79

THAT THE ACCUSED ARE GUILTY OF CONTRAVENING SECTION 4: READ WITH SECTION 1, OF THE PREVENTION OF ORGANISED CRIME ACT, 121 OF 1998 - MONEY LAUNDERING

IN THAT during the period as per column 2 of Schedule A and at or near Johannesburg, in the Regional division of Gauteng, the accused, knew or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and

entered into any agreement or engaged in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement or transaction is legally enforceable or not, or performs any other act in connection with such property, whether it is performed independently or in concert with any other person,

To wit: Exporting Rhino horns for trade as per column 1- 4 of Schedule A without a permit.

Which has or is likely to have the effect

- i) of concealing or disguising the nature , source, location, disposition or movement of the said property or its ownership or any interest which anyone may have in respect thereof; or
- ii) of enabling assisting any person who has committed or commits an offence whether in the Republic or elsewhere-
 - (aa) to avoid prosecution; or
 - (bb) to remove or diminish any property acquired directly, or indirectly, as a result of the commission of the offence.

Penalty Provision: Fine not exceeding R 100 million, or to imprisonment for a period not exceeding 30 years

ALTERNATIVE TO COUNT 53-79

THAT THE ACCUSED ARE GUILTY OF CONTRAVENING SECTION 5 READ WITH SECTION 1, OF THE PREVENTION OF ORGANISED CRIME ACT, 121 OF 1998 - ASSSITING ANOTHER TO BENEFIT FROM UNLAWFUL ACTIVITIES

IN THAT during the period as per column 2 of Schedule A and at or

Near Johannesburg, in the Regional Division of Gauteng, the accused, knew or ought reasonably to have known that another person has obtained the proceeds of unlawful activities and entered into any agreement with anyone or engaged in any arrangement or transaction whereby the retention or the control by or on behalf of the said other person of the proceeds of unlawful activities is facilitated; or

the said proceeds of unlawful activities are used to make funds available to the said other person or to acquire property on his or her behalf or to benefit him or her in any other way.

To wit: Exporting Rhino horns for trade as per column 1- 4 of Schedule A without a permit.

Penalty Provision: Fine not exceeding R 100 million, or to imprisonment for a period not exceeding 30 years

IN THE REGIONAL COURT FOR THE REGIONAL DIVISION OF KEMPTON PARK
HELD AT KEMPTON PARK

CASE NO: 143/2011

In the matter between:

THE STATE

and

CHUMLONG LEMTONGTHAI

PUNPITAK CHUN CHOM

MARNUS STEYL

TOOL SRITON

PATRUIS MATTHUYS

OUBENE FRANK KOBEA

ACCUSED NO 1

ACCUSED NO 2

ACCUSED NR 3

ACCUSED NR 4

ACCUSED NR 6

ACCUSED NR 7

ACCUSED NR 1'S PLEA ITO S112(2)
OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 ("CPA")

A. BACKGROUND

1. I am accused nr 1 (of 6) in this matter.
2. I am a citizen of Thailand and my entire family lives there.
3. I know and understand the charges I am facing.
4. My legal representations (through the official interpreter in this case, Mr SANGWAL THABJA) have explained to me:
 - 4.1. The preamble to the charge sheet and its evidential value;
 - 4.2. The contents of the 79 (seventy nine charges I am facing) in findings the penalty provisions thereto;

Sangwal Thabja
Depot.

4.3. My rights itos35(3) of the Constitution of the Republic of South Africa (Act 108 of 1996) and in particular:

4.3.1. my right to silence;

4.3.2. my right to advice and challenge evidence;

4.3.3. my right to be presumed innocent.

5. Although the charge sheet alleges that I am the director of Thai company XAYSAVANG TRADING EXPORT AND IMPORT, I am in reality merely an agent of theirs. The Director of this organization is VIXAY KEOSAUANG (Proof of this is attached hereto as "CL")

6. I plead guilty to counts 1 – 26 in Court in that I unlawfully and intentionally made improper use of documents set out in columns 1 and 3 of Schedule "A" (attached to the charge sheet) in respect of goods to which the Customs And Excise Act relates, to wit the exports of rhino horn.

7. I therefore plead guilty contravening s80(1)(i) of the Customs and Excise Act of 91/1964.

8. In addition to the above I plead guilty to count 27 – 52 contravening s57(1) read with s1 56(1), 57(2), 97(1), 98(2) 101 and 102 of the National Environmental Management Biodiversity Act 10 of 2004 and Chapter 7 of NEMBA and further read with Regulation 150, 151 and 152 published in the Government gazette 29657 on 23 February 2007 – also Regulation 148 published in Government Gazettes 3189 on 15 February 2009 also read with Schedule 1 of the Prevention of Organized Crime Act, 121 of 1998 read with s250 of the C.P.A.

9. I admit that on or about the dates set out in Column 1 of Schedule "A" and at or near O.R Tambo Airport within the Regional Division of Gauteng, I unlawfully and intentionally carried out a restrictive activity involving a specimen of a threatened or protected species to wit trading in rhino horns (a listed threatened or protected species without the necessary permits to authorized trade therein).

10. I plead not guilty to counts 53 – 79

11. I make this plea;

11.1 freely and voluntarily;

11.2 without undue influence;

11.3 whilst in my sound and sober senses.

Shoo Khammer
Shoo

B. THE FACTS LEADING TO THE CHARGES

12. I live and work in Thailand
13. I also act in an agent of various Export and Imports Groups and companies in Thailand.
14. The Division of XASAVANGA, MR KEOSAVANG decided to send me to South Africa to enquire about the purchasing of Lion Bones.
15. On my arrival in South Africa I saw various advertisements of the hunting of the big five including rhino. I informed MR KEOSAVANG who suggested that I make enquiries and that he would fund any trade in rhino horn.
16. I contacted various outfitters (persons who organize hunts) including Mr Marnus Steyl (accused nr 3).
17. I was informed that if I bring hunters from Thailand to shoot rhino application will be made for hunting permits on their behalf.
18. As part of the application, the hunting history, age and gender of the hunters- to-be would be forwarded to nature conservation which would process the application and, if satisfied that all legalities had been met, would issue a hunting permit in the name of the proposed hunter.
19. I forwarded all the necessarily information as well as copies of the passport of the hunters to the outfitters/landowners who then applied on our behalf for the hunting permits.
20. The people on whose behalf the applications were made were not *bona fide* hunters and their passports where merely used to fraudulently obtain hunting permits in their names.
21. None of the outfitters/landowners (including accused 3) were aware of the abovementioned facts in short they did know that the (hunters) were a front for our decision to export rhino horn for trade and not for trophies.
22. At all times relevant to these charges I acted as an agent for XASAVANG.
23. At all times relevant to these charges I admit that my actions as aforesaid were unlawful and intentional.
24. I humbly apologize to the court and to the people of South Africa for my role in this matter. I appreciate that the emotions of all animal lovers in South Africa are running very high and that I was part of the problem.

Handwritten signature and initials

DATED ON THIS DAY 5TH NOVEMBER 2012 AT KEMPTON PARK.

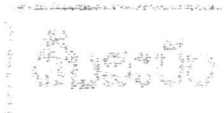
Chumlong Lemtongthai

CHUMLONG LEMTONGTHAI
ACCUSED NR 1

Thair

Sangwal Thakjan
Thair Interpreter

Jacob Johannes Kötze Dempsey
Attorney for accused



No : 0013 / ERO

- Base upon the Enterprise Law No: 11/NA, Dated: 09/11/2005.
- In accordance with the Application for Enterprise Registration, Dated 8/8/2008.

Mr. Vixay KEOSAVANG : Nationality : Lao , Acting as Director of:

- Name of Enterprise : Xaysavang Trading Import – Export CO.,LTD
- Name of Enterprise in English: Xaysavang Trading Import – Export CO.,LTD
- Form and Kind of Enterprise : Company Sole Limited
- Registered Capital : 13.050.000.000. kip.
- Location of Enterprise: Anusonxay Village ; Pakxan District , Bolikhamxay Province
- Categories of Business (Stated on another side)

01-00000005	4425	(A.G.S.H.G/6)
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Vientiane Capital, Dated
Enterprise Registrar

Dated 10/01/2007

THE UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
DIVISION OF VERIFICATION
CHICAGO IS HERE
CERTIFY THAT THIS DOCUMENT IS A TRUE
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