



**Mutanga v Republic (Criminal Miscellaneous Application
E031 of 2023) [2024] KEHC 17223 (KLR) (28 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 17223 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL MISCELLANEOUS APPLICATION E031 OF 2023**

**TM MATHEKA, J
AUGUST 28, 2024**

BETWEEN

AMBROSE KYUTHA MUTANGA APPLICANT

AND

THE REPUBLIC RESPONDENT

RULING

1. The applicant Ambrose Kyutha Mutanga - filed a Chamber Summons dated 3/8/2023 styled thus:
Mitigation factors
 1. That, I pleaded guilty to the charges during trial, however I beg this honourable court to allow me mitigate as far as sentence is concerned.
 2. That I humbly ask this honourable court to consider for leniency and reduce the 7 years imprisonment with short term sentence as a decision was harsh and excessive as whole.
 3. That, currently my health was markedly been determinate due to severe illness such as acute stomach ulcers, hence beg for a non-custodial sentence to allow me access proper medication.
 4. That, I was the sole breadwinner in our family as my parents died when we were young and my children are too young also, hence kindly beg for reduction of my sentence or non-custodial sentence to allow me access proper medication and same to allow me cater for my siblings.
 5. That, I humbly beg the honourable court to have leniency on me and allow me join back the society as currently have undergone rehabilitation, reformed and ready to abide by the law of the society.
 6. That, may this honourable court consider my plea for leniency over the long term at imprisonment as far as the mitigation factor are true to the best of my knowledge information and belief.



7. That, I wish to be present during the hearing of the application.
2. The applications is supported by an affidavit and the committal warrant in Makindu SPM CR E080/2023 indicating that he was sentenced to 7 years imprisonment on 20/5/2023.
3. The applicant was charged with; dealing in wildlife trophy contrary to Section 92(2) of the [Wildlife Conservation And Management Act](#) of 2013.
4. He was arrested on 23/1/2023.
5. He took plea on 25/1/2023. He pleaded not guilty but as soon as bond terms were set, and pre- trial date given for 9/2/2023 he told the court:

“Nakubali mashtaka”

6. A plea of guilty was entered. The prosecutor told the court:- “I pray for a date for facts for the analyst report.”
7. The court directed:-

“Mention on 9/2/2023 for analyst report; pre-sentence report; for facts”

8. The matter was mentioned and the accused was not present as he was in custody.
9. On 6/3/2023, he was produced & facts were presented thus;

On 23/1/2023 at 6.30pm at BP area at Kibwezi Sub County Officer of Kenya Wildlife Service led by ranger at Robi got intelligence report from an informer that someone was suspected of selling Sandal Wood. Upon getting the intelligence , ranger Robi in Company of his colleague went to the scene and 6.50 pm they headed and went camp near Kibwezi gate C and left the vehicle and then headed the rest of the way by foot. The headed to,,, along Mombasa Nairobi highway. They headed to Manyatta Town at 2km from Kibwezi Town. They lay ambush and at 8.45pm ranger Ali Robi saw a motorcycle from Kibwezi Junction and they got ready. The vehicle was ferrying 1 passenger alighted while carrying the sack. The passenger was first with sack, Kenya Wildlife Service Officer introduced themselves and asked to see the said sack. Ranger Ali Robi conducted the search and inside the sack that found what the suspected was sandal wood and arrested him, escorted him to headquarters for investigations. Accused identified himself as Ambrose and accepted that he was from with the sandal wood. He was arrested and charged with the offence herein. Exhibit memo was prepared 2/2/2022 and taken to national Museum where it was confirmed that what the wood was sandal wood. Report from National Museums is dated 2/2/2023.

Exhibit memo - Pexh. 1 Report from expert - Pebt 2 Sandal wood - Pebt 3.

10. The applicant; response was “maelezo ni ya ukweli”.
11. The prosecutor said he was a 1st offender in mitigation the applicant told the court that
“I am a parent and I have 3 children. I was using the sandal wood as fire wood I did not know ... I shall not repeat.”
12. The matter was referred for social inquiry report.
13. The report indicates that the applicant was engaged in some work within the park and collected the pieces of wood as firewood - and was not aware that it was actually sandal wood.



14. That is the same thing that he told the court in mitigation. Section 92 of the *Wildlife Conservation and Management Act* No 47 of 2013 provides for offences relating to endangered and threatened species. Article (2) it states:-

“ A person who without permit or exemption issued under this Act deals in a Wildlife trophy of any critically endangered or endangered species as specified in the Sixth Schedule or listed under *CITES* Appendix 1, commits an offence and shall be liable to a term of imprisonment of not less than 7 years”.

15. I have carefully considered the application. The applicant has placed before the court what he refers to as “mitigation factors” – all intended to persuade the court to reduce/review his sentence to either less than 7 years or different sentence.

16. He concedes that he pleaded guilty to the charge – hence he has no problem with the plea.

17. The sentence given by the court is a sentence that is lawful – the sentence provided by the law: The trial magistrate considered the mitigation factors that he presented at the trial and the court meted out to him the minimum sentence provided for by the law.

18. In the circumstances I find no reasons to disturb the sentence on the basis of the application before me.

19. The application has no merit and is dismissed.

**DATED SIGNED AND DELIVERED VIRTUALLY , THIS 28TH DAY OF AUGUST 2024.
MUMBUA T. MATHEKA**

**SIGNED BY: LADY JUSTICE MATHEKA, TERESIA MUMBUA
JUDGE**

Ms Mwanatumu CA Ms Nyakibia for state Applicant present

THE JUDICIARY OF KENYA.

MAKUENI HIGH COURT

HIGH COURT DIV

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