



REPUBLIC OF KENYA



**Maruti & another (Criminal Appeal E053 of 2024)  
[2024] KEHC 16293 (KLR) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 16293 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL APPEAL E053 OF 2024  
REA OUGO, J  
OCTOBER 30, 2024**

**IN THE MATTER OF**

**VALENTINE NASIPONDI MARUTI ..... 1<sup>ST</sup> APPELLANT**

**BETHWEL KIBOI KIPRUTO ..... 2<sup>ND</sup> APPELLANT**

*(An Appeal from the judgment of Hon. G. Adhiambo SPM Kimilili  
in Criminal Case No. E466 of 2023 delivered on the 12.4.2024)*

**JUDGMENT**

1. Valentine Nasipondi Maruti the 1<sup>st</sup> appellant and Bethwel Kiboi Kipruto the 2<sup>nd</sup> appellant were charged with the following offence in the subordinate court: Count No. 1 “Dealing with carcasses or meat of wildlife species is contrary to section 98 (1) of the Conservation and Management Act 2013. The particulars of this offence are “ on the 20<sup>th</sup> day of May 2023 at around 20230 hrs at Bugaa village of Mt. Elgon within Bungoma county was dealing in the carcass or Meat of wildlife species namely Bush back without permit contrary to section 98 (1) of the *Wildlife Conservation and Management Act* of 2013.

Count No2. was “ Being in possession of a wildlife trophy without a permit or other lawful exemption to section 95 (d) of the *Wildlife Conservation and Management Act* 2013. The particulars of the offence are that; “ on the 26<sup>th</sup> May 2023 at around 2030hours at Bugaa village area of Mt. Elgon within Bungoma County was found in possession of Wildlife trophies namely (1) one bush back skin tall and hooves of another also suspected to be of a bush back without permit from the Director General of Kenya Wildlife Service.

2. At the hearing of the appeal both the appellants abandoned their joint appeal and sought to have the period they have been in remand considered as part of their sentence. The prosecution did not oppose their request. Their request is in line with the provisions of section 333(2) of the Criminal Procedure Code.



3. The appellants were sentenced as follows; For Count No. 1 each was sentenced to serve 12 months imprisonment and for Count No. 2 each was fined Kshs. One million in default 12 months imprisonment.
4. At the hearing of this appeal the appellant informed the court that they were not challenging the conviction but only the sentence. The 1<sup>st</sup> appellant Valentine asked the court to consider her sentence and to review it. Bethwell the 2<sup>nd</sup> appellant asked the court to take into account the period he had been in remand.
5. The Act under which the appellants were charged provides at section 95 as follows;

95. Offences relating to trophies and trophy dealing

Any person who, without a permit or exemption granted under this Act in relation to a species not specified under section 92—

- (a) kills or injures, tortures or molests, or attempts to kill or injure, any wildlife species;
- (b) deals in a wildlife trophy;
- (c) deals in a live wildlife species;
- (d) is in possession of a wildlife trophy or live wildlife species; or
- (e) manufactures an item from a wildlife trophy, commits an offence and shall be liable on conviction to a fine of not less than one million shillings or a term of imprisonment of not less than twelve months or to both such fine and imprisonment.

98. Offences relating to hunting for bush-meat trade

- (1) Any person who, without permit or exemption issued under this Act, deals in the carcass or meat of any wildlife species commits an offence and shall be liable on conviction, to imprisonment for a term of not less than three years.

6. The trial court convicted the appellants after a full hearing. For count no. 1 the appellants were each sentenced to serve twelve (12 ) months imprisonment. They were not fined. The court complied with the law and sentenced the appellants to the minimum sentence. The offence is a serious offence and I have not been persuaded that it should and can be reviewed. The appellants shall continue serving the 12 months imprisonment.
7. On the second count, the trial court fined each appellant 1,000,000/- ( one million) and, in default, 12 months' imprisonment. This sentence, too, is lawful as per section 95 (1) of the Act. The Supreme Court in Petition E018 OF 2023 held as follows on minimum sentences.

56 “ Mandatory sentence leaves the trial court with absolutely no discretion such that upon conviction, the singular sentence is already prescribed by law. Minimum sentences however set the floor rather than the ceiling when it comes to sentences. What is prescribed is the least sentence a court can issue, leaving it open to the discretion of the courts to impose a harsher sentence. In fact, to use the words mandatory and minimum together convolutes the express different the express different definitions given each of the two words.’ (emphasis mine)

8. I am guided by the above decision. Section 333(2) of the Criminal Procedure Code obligates the court to consider the time already spent in custody during sentencing. This was emphasized by the Court of Appeal in *Ahamad Abolfathi Mohammed & Another vs. Republic* [2018] eKLR and *Bethwel Wilson Kibor vs. Republic* [2009] eKLR. The only plea this court will grant to the appellants is that the prison



authorities shall compute the period the appellants were in remand before sentence in line with the provisions of section 333(2) of the Criminal Procedure Code.

9. I, therefore, decline to reduce the sentence as sought, the sentences were proper and lawful. The appeal is dismissed.

**DATED, SIGNED, AND DELIVERED AT BUNGOMA ON THE 30<sup>TH</sup> OF OCTOBER 2024.**

**R.E.OUGO**

**JUDGE**

In the presence of:

Valentine Nasipondi Maruti/1<sup>st</sup> Appellant

Bethwell Kiboi Kipruto/ 2<sup>nd</sup> Appellant

M/s Matere For the Respondent

Wilkister C/A

