



REPUBLIC OF KENYA



**Dulu v Republic (Petition E046 of 2023)
[2024] KEHC 15068 (KLR) (22 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15068 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
PETITION E046 OF 2023
AN ONGERI, J
NOVEMBER 22, 2024**

BETWEEN

JAMES MAKERE DULU APPLICANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Petitioner filed this Petition alleging violation of his constitutional rights under Article 50(2)(p) (q) of *the Constitution* of Kenya.
2. The Petitioner was charged with two counts under the *Wildlife Conservation Management Act* (WCMA).
3. The first count was being in possession of wildlife trophy without a permit contrary to Section 95 of the WCMA Act.
4. The second count was dealing in wildlife trophy without a licence contrary to Section 84(1) as read with Section 92 of the WCMA Act.
5. The Applicant submitted that Section 92 of the WCMA was amended through State Law *Act No. 18 of 2018* and it provides under Section 92(2) for a custodial sentence of 7 years imprisonment.
6. The Petitioner was sentenced on count 2 to life imprisonment.
7. His appeal to the High Court and the appeal was dismissed.
8. The Petitioner appealed to the Court of Appeal and the conviction was upheld but the sentence was reviewed to a fine of Kshs. 20,000,000/= in default 20 years imprisonment.



9. The Petitioner argued that the repealed Section 92 of the WCMA No. 47 of 2013 stated that:-

“Any person who commit an offence in respect of an endangered or threatened species or in respect of any trophy of that endangered or threatened species shall be liable upon conviction to a fine of not less than Twenty Million Shillings or imprisonment for life or to both such fine and imprisonment.”
10. The Petitioner submitted that his rights under Article 50 were violated by being convicted under a repealed section which was found to be ambiguous by providing for a sentence without creating an offence.
11. The Court of Appeal refused to delve into the application of Section 92 for reasons that it was raised for the first time during the second appeal to the court.
12. The Respondent conceded that the Petitioner’s constitutional rights were violated under Article 50(2) (q).
13. The said section states as follows:-

(Judge to add)
14. The Respondent further conceded that the Petitioner ought to have benefited from the least severe sentence under Section 92(2) of the WCMA.
15. The Petitioner was sentenced to life imprisonment on 24th October 2017.
16. The life imprisonment was reduced to a fine of Kshs. 20,000,000/= in default twenty (20) years imprisonment.
17. The Petitioner relied on the case of Jasbir Singh Rai & 3 Others =versus= Tarlochan Singh Rai Estate & 4 Others (2013) eKLR where it was held as follows:-

(Judge to add)
18. The Petitioner urged the court to interpret Section 84(1) as read with section 92(2) of the WCMA as amended by the Statute Law (Miscellaneous Amendments) [*Act No. 18 of 2018*](#).
19. The Petitioner further urged the court to sentence him to the least severe sentence of 7 years imprisonment to commence from 24th October 2019 when he was sentenced by the trial court.
20. The Petitioner further submitted that others have benefited from the same and under Article 27(1) and (2) of [*the constitution*](#) every person is equal before the law.
21. He urged the court to allow this Petition in the interest of proportionality of the sentencing and the principle of non-discrimination.
22. I find that the Respondent conceded to this petition.
23. I find that the prescribed sentence for the offence was charged between the time the Petitioner was sentenced on 24th October 2017 and the time of the amendment of Section 92 of the WCMA 2013 vide the Statute Law (Miscellaneous Amendments) [*Act No. 18 of 2018*](#) which came to force on 18th January 2019.
24. However, the said law was in force on 30th April 2020 when the High Court at Voi dismissed the first appeal.



25. The second appellate court which is the Court of Appeal refused to delve into the said issue in its judgment delivered on 9th February 2024.
26. The Court of Appeal reduced the petitioner's sentence from life imprisonment to a fine of 20,000,000 in default 20 years imprisonment.
27. There was nothing to stop the Court of Appeal from sentencing the petitioner to the least severe sentence of 7 years imprisonment which he is seeking from this court.
28. This Petition is an attempt to have a second bite of the cherry by raising issues which were already dealt with in the Court of Appeal.
29. I accordingly dismiss the Petition for want of merit.

DATED, SIGNED AND DELIVERED THIS 22ND DAY OF NOVEMBER 2024 IN OPEN COURT AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-

Prosecutor: Evah Kanyuira

Court Assistants: Maina/Trizah

Applicant

