



REPUBLIC OF KENYA



**Muweye v Republic (Criminal Revision E280 of 2022)
[2023] KEHC 388 (KLR) (25 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 388 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION E280 OF 2022
JN ONYIEGO, J
JANUARY 25, 2023**

BETWEEN

TITUS MADSIKO MUWEYE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was on July 25, 2022 presented before the Voi CM'S court charged with the offence of being found in possession of carcass of wildlife species contrary to section 98(1) of the [Wildlife Conservation And Management Act](#), 2013 Laws of Kenya. Particulars were that on July 23, 2022 at around 0300 hrs at Tanki Saba area of Taita ranch conservancy within Taita Taveta county with another not before the court were found with carcasses of wild life species namely; two (2) impalas, one (1) lesser kudu, five (5) dikdiks all weighing 98 kgs while in possession of one siren fitted with a torch, one torch, a panga, two (2) bicycles and six assorted sacks without a permit or any other exemption.
2. Upon returning a plea of guilty, he was convicted and sentenced to four years imprisonment. Aggrieved by the sentence, the applicant moved to this court on September 12, 2022 *vide* a notice of motion seeking revision of sentence on grounds that; he was a first offender; the sentence is excessive; he is the sole bread winner of his family; he has reformed; he is a Christian and that; he be released on a non-custodial sentence.
3. In response, the state opposed the application on grounds that the sentence imposed is legal considering the seriousness of the offence committed.
4. It is trite law that this court is empowered to exercise its supervisory powers under article 165(6) and (7) of the [Constitution](#) to call for a subordinate court's record so as to make any directions or order to ensure fair administration of justice. Besides, under section 362 and 364 of the [Criminal Procedure Code](#), the High Court is empowered to call upon and examine the record of any criminal proceedings



from a subordinate court so as to satisfy itself as to the correctness, legality, propriety on sentence passed or order made and on the regularity of the proceedings.

5. I am alive to the fact that sentencing is at the discretion of the trial court. However, this court in its appellate capacity is empowered to intervene where the sentence meted out is illegal or excessive. See *Shadrack Kipkoeb Kogo v Republic Criminal Appeal Number 25 of 2003* where the Court of Appeal held that sentencing is at the discretion of the trial court and that an appellate court can only interfere or intervene if it is shown that the trial court took into consideration irrelevant factors, applied wrong principles of the law or that the sentence was excessive and therefore an error.
6. The applicant herein is not challenging conviction but rather seeks revision of sentence on account that the sentence imposed was excessive and that he was a first offender. The applicant was sentenced to serve 4 years imprisonment while the minimum sentence provided against this offence is 3 years imprisonment.
7. Considering that the applicant was a first offender and that he had pleaded guilty thus saving court's precious time, the court should have considered the minimum sentence provided in law. Accordingly, I am persuaded to substitute the sentence of 4 years imprisonment with three years imprisonment. The same shall start running from the date of sentence by the trial court.
8. Right of appeal 14 days.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 25TH JANUARY 2023

J NONYIEGO

JUDGE

