



REPUBLIC OF KENYA



**Shilima v Republic (Criminal Revision E295 of 2022)
[2023] KEHC 391 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 391 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION E295 OF 2022
JN ONYIEGO, J
JANUARY 19, 2023**

BETWEEN

JONNIE ELIAS SHILIMA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was on January 3, 2022 arraigned before Taveta PM's court charged with dealing with meat of wildlife species contrary to section 98(1) of the *Wildlife Conservation and Management Act* 2013 No 47 laws of Kenya (revised 2018). Particulars are that on January 1, 2022 at around 0130 hours at Mohoho farm area within Taita Taveta county with others not before the court, was found dealing in meat of wildlife species namely; around sixty (60) kilograms of suspected impala meat concealed in two manila sacks, one (1) panga and one torch mounted with an improvised horn without a permit.
2. Count two, he was charged with being unlawfully present in Kenya contrary to section 53(1)(j) as read with section 52(2) of the *Kenya Citizenship and Migration Act*. Particulars were that on the January 1, 2022 at around 0130 hours at Muhoho farm area within Taita Taveta county was found unlawfully present in Kenya without valid passport being a Tanzanian national.
3. Having returned a plea of guilty, he was convicted and sentenced to four years imprisonment in respect to count one and a fine of Kshs 100,000 /= in default serve one year imprisonment in respect to count two. The court further ordered sentences to run consecutively.
4. Aggrieved by the said sentence, the applicant moved this court on October 4, 2022 through a notice of motion seeking review of the sentence on grounds that he; was a first offender; was remorseful and that he be released on suspended sentence.



5. During the hearing, the applicant reiterated the content contained in his application thus stating that he was the sole breadwinner of his family. The state opposed the application save for the submission that sentences should run concurrently.
6. I have considered the application herein and response thereto. This court has been summoned to exercise its discretion to revise the impugned sentence. 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 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.
7. Courts have time and again held that sentencing is at the trial court's discretion and that an appellate court can only interfere if proved *inter alia*; that the trial court erred by applying wrong principles of the law or that the sentence was excessive. See the case Bernard Kimani Gacheru v Republic (2002) eKLR.
8. The appellant pleaded guilty to the charge thus saving the court precious time. Being a first offender, the court should have considered imposing the minimum sentence provided for under the relevant penalty section which is three years imprisonment. Accordingly, am inclined to substitute the sentence of four years with three years' imprisonment in respect of count one. I will however not interfere with the sentence in respect of count two. The two sentences shall run concurrently commencing the date of sentence by the trial court.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 19TH DAY OF JANUARY, 2023.

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J.N ONYIEGO

JUDGE

