



REPUBLIC OF KENYA



KENYA LAW
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**Warugha v Republic (Criminal Revision E324 of 2022)
[2023] KEHC 432 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 432 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION E324 OF 2022
JN ONYIEGO, J
JANUARY 19, 2023**

BETWEEN

JACKSON NGALA WARUGHA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was presented before Taveta PM's court on August 11, 2022 charged with the offence of dealing in meat of wild life species contrary to section 98(1) as read with section 105 of the *Wildlife Conservation and Management Act 2013*(revised 2018). Particulars were that on the 11th day of August 2022 at around 0709 hours at Sarova Salt Lick area within Taita Taveta County with others not before court was dealing in meat of wildlife species namely zebra meat weighing about 85 kilograms using motorcycle registration number KMEW 441J, TVS red in colour, one knife and two manila sacks used to conceal the meat without authorization.
2. Upon pleading guilty, the applicant was convicted and sentenced on September 28, 2022 to 4 years' imprisonment. Dissatisfied with the sentence, the applicant filed a notice of motion on November 11, 2022 seeking revision of the sentence on grounds that he is a first offender; he is remorseful; he is the sole bread winner of his family and that the sentence imposed was excessive.
3. When the matter came for directions, the court ordered for re-sentencing report which recommended that the applicant be committed to community service order.
4. During the hearing, the applicant urged the court to consider his application thus stating that his mother entirely depended on him. On their part, the state opposed the application thus contenting that the offence committed was serious and that the applicant had not stayed in custody for long.
5. I have considered the application herein vis a vis the response thereof. This court has been moved to exercise its discretionary powers in revising the sentence imposed by the trial court.



6. 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. In the instant case, the applicant is claiming/arguing that the sentence imposed was excessive and that he was remorseful. It is trite 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 considered irrelevant factors or that the sentence was excessive. See the case Bernard Kimani Gacheru vs Republic (2002) eKLR.
8. The appellant was sentenced to serve 4years imprisonment against the minimum sentence of three years provided for under the relevant provision of the law. Considering that he had guilty thus saving court's time and was a first offender, the court should have considered the minimum sentence provided under that provision. On that ground, it is my finding that the sentence of four years was a bit excessive in the circumstances. Accordingly, the sentence of four years is substituted with three years' imprisonment. The same shall start running from the date of sentence before the trial court.

ROA 14 days.

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

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J.N. ONYIEGO

JUDGE

