



REPUBLIC OF KENYA



**Michael v Republic (Criminal Revision E432 of 2022)
[2023] KEHC 1546 (KLR) (Crim) (27 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1546 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL REVISION E432 OF 2022**

**DR KAVEDZA, J
FEBRUARY 27, 2023**

BETWEEN

KISAKA NAOMI MICHAEL APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant seeks revision of her sentence of 1-year imprisonment term for being in possession of wildlife trophy contrary to section 92(4) of *Wildlife Conservation and Management Act, 2013*.
2. The Community Service Officer F Masila filed a sentence review report in court for consideration. The report shows that the Applicant is aged 26 years. She is currently serving her sentence at Lang'ata Women's Prison.

Analysis of Law

3. The powers of the High court in revision are contained in section 362 through to 366 of the *Criminal Procedure Code* (cap 75). Section 362 specifically provides as follows: -

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court”
4. The sentence provided for the offence of being in possession of wildlife trophy contrary to section 92(4) of the *Wildlife Conservation and Management Act* is fine of not less than 3 million shillings or a term of not less than 5 years imprisonment. The sentence of a fine of Kenya Shillings Three million



(Kshs 3Million) and in default 1-year imprisonment was within the law. It has not been demonstrated that the trial magistrate committed any illegality, impropriety or mistake in sentencing the applicant.

5. I am nonetheless alive to the [Sentencing Policy Guidelines](#) page 21 which provides: -

“Where the option of a non-custodial sentence is available, a custodial sentence should be reserved for a case in which the objectives of sentencing cannot be met through a non-custodial sentence. The court should bear in mind the high rates of recidivism associated with imprisonment and seek to impose a sentence which is geared towards steering the offender from crime. In particular, imprisonment of petty offenders should be avoided as the rehabilitative objective of sentencing is rarely met when offenders serve short sentences in custody. Further, short sentences are disruptive and contribute to re-offending.”

6. Being that the applicant has no fixed abode in Kenya and that she is a Tanzanian National who was travelling back home before the arrest, I find that effecting the probation or community service order would prove difficult since the office’s jurisdiction does not extend to other countries.

7. However, since this file has been called for with a view to decongest the women’s prison, I direct that the applicant be released forthwith unless she is lawfully held for any other reason.

RULING READ, DELIVERED AND SIGNED THIS 27TH DAY OF FEBRUARY 2023

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D. KAVEDZA

JUDGE

In the presence of:

