



**Mwengea v Republic (Miscellaneous Criminal Application E024 of 2023)
[2023] KEHC 22590 (KLR) (27 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22590 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
MISCELLANEOUS CRIMINAL APPLICATION E024 OF 2023**

TM MATHEKA, J

SEPTEMBER 27, 2023

**IN THE MATTER OF S. 333(2) OF THE CRIMINAL PROCEDURE CODE
(ORIGINAL CRIMINAL CASE MAKINDU SPMCRC NO. 188 OF 2019)**

BETWEEN

JUSTUS MUTIE MWENGEA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant Justus Mutie Mwengea took plea on February 22, 2019 where he was charged with the offence under s 92 (4) of the *Wildlife Conservation and Management Act*, 2013. It was alleged that he was found in possession of 2 pieces of tusk valued at ksh 4.3million without a permit. He pleaded not guilty. After a full trail he was found guilty, convicted and sentenced to pay fine of Ksh 1,000,000 in default to serve 5 years in prison on May 31, 2023.
2. The sentence was pursuant to s 92(4) which states
 92. Offences relating to endangered and threatened species
 - (4) Any person without permit or exemption issued under this Act is in possession of any live wildlife species or trophy of any critically endangered or endangered species as specified in the Sixth Schedule or listed under CITES Appendix I, commits an offence and shall be liable upon conviction to a fine of not less than three million shillings or a term of imprisonment of not less than five years or both such fine and imprisonment.
3. All this time he was in remand custody.
4. He immediately filed an application seeking the revision of the sentence because the trial court did not indicate whether /not it had taken into consideration the period spent in custody - pending trial.



5. Section 333(2) requires that the period the accused person has spent in custody be taken into consideration otherwise he might end up serving an illegal sentence.
6. The learned trial magistrate appears did not in the sentence state that she had taken into consideration the period the applicant had spent in custody pending trial, but did determine that a term of 5 years imprisonment would suffice.
7. The record shows that was in custody from February 20, 2019 to May 31, 2023 when he was convicted and sentenced.
8. In the circumstance the justice of the case as per the provision to Section 333 (2) of the Criminal Procedure Code , require that the applicant sentence be revised.
9. Accordingly the sentence is revised to read - applicant is sentenced to pay fine of Kshs 1,000,000 in default to serve 5 years imprisonment. The default sentence to run from the date of plea which is February 20, 2019.
10. Orders Accordingly

DATED, SIGNED AND DELIVERED THIS 27TH SEPTEMBER 2023

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MUMBUA T MATHEKA

JUDGE

CA Mwiwa

Tanui for state

Applicant present

