



Kianda & another v Republic (Miscellaneous Criminal Revision E105 of 2021 & Criminal Revision E011 of 2022 (Consolidated)) [2022] KEHC 10415 (KLR) (21 April 2022) (Ruling)

Neutral citation: [2022] KEHC 10415 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CRIMINAL REVISION E105 OF 2021 &
CRIMINAL REVISION E011 OF 2022 (CONSOLIDATED)**

GWN MACHARIA, J

APRIL 21, 2022

BETWEEN

EDWARD CIENGO KIANDA 1ST APPLICANT

MUTETI KIAMA 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. From the outset, I note that the 2nd applicant herein filed a duplicity of applications, both seeking a similar prayer, which is that his sentence be revised. The first file is High Court Criminal Misc Application No E111 of 2021 - Muteti Kiama vs Republic. This file was coming up for hearing on 7/12/2021 but on this date, the lower court had not been availed. It was then fixed for hearing on 16/2/2022.
2. The second file is High Court Criminal Revision No E011 of 2021 Muteti Kiama v Republic. The application herein filed on 21/10/2021 was heard on 16/2/2022 and a ruling date set for 31/3/2022. On the latter date, the ruling could not be delivered as the court was informed that the trial court file was attached to High Court Misc Criminal Application No. 105/2021 in which a similar application was heard on 29/3/2022 and ruling reserved for 21/4/2022. Accordingly, the ruling in Revision No E011/2022 was also reserved for 21/4/2022.
3. That drives me to the file Misc Criminal Application No E011/2021 - Edward Ciengo Kianda which is subject to the instant ruling.
4. In view that Misc Criminal application No E111/2021 and Revision No E011/2021 were filed by the same applicant and seek similar orders, it is superfluous to write two rulings that add no value.



Respectively, since the former had not been argued, the same is struck out and the file marked as closed. A copy of this ruling shall be filed therein.

5. That leaves the court to determine the two consolidated applications. They have been consolidated in view that the two applicants were charged jointly at Engineer Law Courts in Criminal case No 1094 of 2018 alongside another. Benard Ciengo Kianda was the second accused whilst Muteti Kiama was the 3rd accused. The offence was that of possession with wildlife trophy contrary to section 95 of the [Wildlife Conservation and Management Act](#) 2013. It was alleged that on the 2nd day of September, 2018 at Njabini Town within Nyandarua County, jointly were found in possession of nine (9) pieces of elephant tusks weighing 23 (twenty three) kilograms with a street value of Ksh2.3 million without a permit from the Director, Kenya Wildlife Service.
6. After a successful trial, the three accused persons were convicted accordingly. Each of them was sentenced to pay a fine of Ksh800,000/= in default serve two years imprisonment. The sentence was passed on 1/3/2021.
7. As regards Edward Ciengo Kianda (hereafter the 1st appellant), he prayed for leniency seeking a non-custodial sentence and/or that the period he was in remand custody be considered to constitute part of the sentence. He said he was remorseful, that one of his parents was sick and in hospital, he had a son who was a candidate in class 8 and would be unable to join Form 1 for lack of school fees if he was not released from custody and that he had no sibling to assist him. He pleaded that he only had 3 months to complete his sentence as at the time of hearing of the application.
8. As regards Kiama Muteti (the 2nd applicant), he submitted that he was remorseful and that he had tender children to take care of. He also pleaded that as at 16/2/2022 when the application was heard, he had 4 months to completing his sentence.
9. Learned State Counsel Ms Maingi for the respondent had no objection to the two applications.
10. I have accordingly considered the two applications and the respective submissions by the applicants. Notably is that the 1st accused in the trial, one Bedford Njeru Kamiri had filed a similar application vide Misc Criminal Application No E814 of 2021. His prayer was basically that the period he was in remand custody prior to the conviction be taken into account in the sentence. Since the three accused persons were arrested at the same time, as noted in Ruling in that application delivered on 11/11/2021, the time spent in custody was 1 month and 29 days. This period does not take into account the remission that may be credited. What this implies is that applicants have been in remand custody for a period of one year and one and a half months. The remission would ordinarily be a third of the sentence. In effect, each of them would leave prison in about one month. It serves no purpose to continue incarcerating. They have already served the purpose of a sentence of rehabilitation, having pleaded remorse.
11. Accordingly, both applications succeed. I find that both applicants have served sufficient sentence and I order that they be forthwith set free unless otherwise lawfully held.

DATED AND DELIVERED AT NAIVASHA THIS 21ST APRIL, 2022.

G. W. NGENYE-MACHARIA

JUDGE

In the presence of;

1st Applicant - in person

2nd Applicant - in person



Ms Maingi for the Respondent

