



**Muli v Republic (Criminal Appeal E116, E093 & E095 of 2021)
[2022] KEHC 15912 (KLR) (29 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15912 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL APPEAL E116, E093 & E095 OF 2021
GMA DULU, J
NOVEMBER 29, 2022**

BETWEEN

MAXWEL NDAMBUKI MULI APPELLANT

AND

REPUBLIC RESPONDENT

((Being an appeal from the original judgment of Hon. B. N. Ireri in Makindu Principal Magistrate's Court PM Criminal Case No.E440 of 2020 pronounced on 22nd September 2021))

JUDGMENT

1. The appellant was charged in the magistrate's court with two others with dealing in a wildlife trophy of endangered species contrary to section 92(2) of the *Wildlife Conservation and Management Act* 2013. The particulars of offence were that on August 27, 2020 at around 17:30 hours at Emali Township within Makueni County jointly were found dealing in wildlife trophy of endangered species namely one leopard skin in two sacks without a permit from KWS Director General.
2. Each of the three denied the charge. After a full trial, each was convicted of the offence and sentenced to 7 years imprisonment.
3. Dissatisfied with the conviction and sentence they filed three (3) separate appeals, two of which were later withdrawn; that is Appeal 93/2021 and Appeal 95 of 2021. The grounds of appeal in appeal 116 of 2021 can be summarized as follows –
 1. The prosecution case is replete with monumental inconsistencies and contradictions which should have attracted an acquittal.
 2. The trial magistrate failed to consider holistically and scrutinize the whole evidence on record as the basis for conviction and sentence.



3. That the sentence is harsh and excessive.
4. The appeal was canvassed through filing of written submissions. In this regard, I have perused and considered the submissions filed by the appellant as well as the submissions filed by the Director of Public Prosecutions.
5. This being a first appeal, I have to start by reminding myself that I am duty bound to evaluate all the evidence on record afresh and come to my own independent conclusions and inferences – see *Okeno -vs- Republic* (1972) E.A 32.
6. In proving their case, the prosecution called three (3) witnesses. Pw1 was Esther Nguta an expert in mammal features at the National Museum of Kenya who examined and prepared and produced a technical report in which it was recorded that the item which was sent to the museum by KWS officers was a leopard skin.
7. Pw2 was Sgt Justine Kinyua and Pw3 was KWS Ranger Bernard Yegon, whose evidence was that acting on information, they proceeded to Emali town near the Shell Petrol Station on 27/08/2020 at 17:30 hours, and met three people peeping into a sack containing the leopard skin, and arrested them, and later took the skin to the National Museum for tests to ascertain if it was a leopard skin.
8. In his defence, the appellant gave sworn testimony. He was the 1st accused, and stated that he was an old man aged 73 years and that, on the day in question, he came from farming and walked to his inlaw's house and met the wife who gave him a stool to sit on as his inlaw had gone to the shop. As he sat, one of his co-accused arrived and was also given a stool to sit on to await the same brother inlaw. That after 20 minutes, they were arrested by KWS Officers. He denied committing the offence..
9. In my view, from the evidence on record, it was proved by the prosecution beyond any reasonable doubt that the item in question recovered by the KWS Officers, was a leopard skin, thus a trophy.
10. Was there evidence of the appellant dealing with the trophy to the required standard? In my view, the evidence of the prosecution on record is clear and consistent that the appellant had possession of the bag in which the other two co-accused, were looking. He had possession of the same. The whole encounter was an attempt to sell the item.
11. The evidence against the appellant especially from Pw2 Sgt. Justin Kinyua, was that he was actually the one in physical possession of the bag containing the leopard skin. In my view, he could only shake the prosecution evidence if he called his brother inlaw or his wife to support his side of the story. He did not do so, and the evidence against him is overwhelming as old as he might be. The evidence from Pw2 and Pw3 shows that the appellant was dealing with the trophy as defined under section 2 of the Act. I will thus uphold the conviction.
12. With regard to sentence, the law under section 92(2) of the Act provides a minimum sentence of seven (7) years imprisonment. Thus the magistrate could not impose a lesser sentence. I will also therefore uphold the sentence.
13. Consequently and for the above reasons, I find no merits in the appeal. I dismiss the appeal and uphold both the conviction and the sentence of the trial court.

Right of appeal explained.

Delivered, signed & dated this 29th day of November 2022, in open court at Makueni.

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George Dulu



Judge

