



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

CRIMINAL APPEAL NO. 14 OF 2018

MONG'ARE MICHIBA OMBATI.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(From the original conviction and sentence in Criminal case No. 749 of 2016 of the Chief Magistrate's Court at

Homa Bay by Hon. Susan Ndegwa–Principal Magistrate)

JUDGMENT

1. Mong'are Michiba Ombati, the appellant, was convicted of the offence of possession of wildlife trophy contrary to section 95 of the Wildlife Conservation and Management Act, 2013.

2. The particulars of the offence were that on the 7th December, 2016 at Homa Bay Town within Homa Bay County jointly with another were found in possession of four elephant tusks weighing 4 kilograms valued at Kshs. 2 million without a permit issued under the Act.

3. The appellant was sentenced to pay a fine of Kshs.1,000,000/= or serve 5 years imprisonment. He was dissatisfied and has appealed against both conviction and sentence. He was in person and raised grounds of appeal as follows:

- a) That the learned trial magistrate erred in law and in fact by failing to appreciate that the change was preplanned against him.
- b) That the learned trial magistrate erred in law and in fact by convicting the appellant on insufficient evidence.
- c) That the learned trial magistrate erred in law and in fact by disregarding the entire defence.

4. The state opposed the appeal through Mr. Ochengo, the learned counsel.

5. The facts of the prosecution case were briefly as follows:

Some officers from KWS received some information from members of public of some two men who were suspected to be in possession of some game trophy. They moved swiftly following the description and arrested the appellant with another one who died before the trial commenced. They were in possession of four elephant tusks without a license.

6. The appellant contended that he was on a mission to look for a market for his cabbages when he was arrested. He denied that he was with the other person.

7. This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **Okeno vs. Republic [1972] EA 32**.

8. In the course of the hearing, the evidence of PW1 and PW2 who arrested the appellant, was that he was new to them. At no point was the issue of false implication raised. The learned trial magistrate therefore did not have any facts before her that could point to a pre-planned scheme to falsely implicate the appellant.

9. The defence of the appellant was that he was walking alone when he was arrested. However, this contention was displaced by the prosecution evidence that the duo were together at the time they received the report and at the time of arrest. The trial magistrate therefore rightly dismissed this defence. I am therefore satisfied that the prosecution proved its case to the required standards.

10. Section 95 of the Wildlife Conservation and Management Act, 2013 state:

Any person who keeps or is found in possession of a wildlife trophy or deals in a wildlife trophy, or manufactures any item from a trophy without a permit issued under this Act or exempted in accordance with any other provision of this Act, commits an offence and shall be liable upon conviction to a fine of not less than one million shillings or imprisonment for a term of not less than five years or to both such imprisonment and fine.

11. The sentence that the learned trial magistrate meted out is the minimum prescribed. The application therefore lacks merit and the same is dismissed.

DELIVERED and SIGNED at HOMA BAY this 23rd day of June, 2021

KIARIE WAWERU KIARIE

JUDGE