

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 55 OF 2018

PAUL MUTUA MASILA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal against the conviction and sentence by Hon. Kibelion (SRM) on 31st May, 2018 in Machakos Chief Magistrates Court Criminal Case No. 358 of 2017)

JUDGEMENT

1. The appellant was charged and convicted for the offence of being in possession of meat of wildlife species contrary to section 98 of the Wildlife Conservation and Management Act 2013 and being in possession of wildlife trophy contrary to section 95 of Wildlife Conservation and Management Act, 2013. He was subsequently sentenced to pay a fine of KShs. 500,000/- in default to serve 2 years imprisonment and KShs. 2,000,000/- in default to serve 6 years imprisonment. The trial court ordered that the sentences run consecutively.

2. Aggrieved by the same, the appellant filed grounds of appeal in which he stated that he is a first offender and sought leniency. That he is remorseful and regrets his action. That he is married to a housewife with school going children who entirely depend on him. He prayed that the sentences run concurrently. That he has a problem with his left leg due to a road accident and custodial sentence is not conducive.

3. In canvassing the appeal, the appellant submitted that he has three children who depend on him and that their education is in jeopardy and prayed for leniency. He stated that there was bad blood between him and his neighbours since he had declined his request to cut grass from his compound and when the game meat was found near his house, he was framed. That he was ordered to explain how the game meat landed near his compound. The appellant requested for non-custodial sentence to enable him take care of his children.

4. The respondent contended that the appellant was only pointing out mitigation which he did before the trial court and which was considered then. That the trial court imposed fair sentences appropriately and the appellant cannot interfere with the discretion of the trial court. It was submitted that for this court to interfere with the trial court's decision, it has to consider whether the sentence was excessive or the trial court failed to consider a crucial fact or while exercising its discretion on sentencing. That the sentences were not excessive and not out of the ordinary and urged that the appeal be dismissed.

5. I have given due consideration to this appeal and the submissions tendered herein. This being a first appeal, I am minded of this court's duty as a first appellate court. While I do so, I see no reason to delve into the facts of this case bearing in mind the fact that the appellant has only raised an appeal on the sentence and not conviction.

6. Section 98 of the Wildlife Conservation and Management Act, 2013 provides that ***"A person who engages in hunting for bush-meat trade, or is in possession of or is dealing in any meat of any wildlife species, commits an offence and shall be liable on conviction to a fine of not less than two hundred thousand shillings or to imprisonment for a term of not less than one year or to both such fine and imprisonment"*** and section 95 of the same Act provides that ***"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 both such imprisonment and fine."***

7. Bearing in mind the above mentioned provisions coupled with the scope of an appellate court to interfere with a trial court's decision thus: where sentencing was made based on wrong principles and where material facts have not been considered or the sentence is manifestly excessive and coupled with notoriety currently given to the killing of wildlife and further the fact that the trial court considered the appellant's mitigation, I find that the trial court was correct in imposing the sentence as it did and I do not find the same to be excessive. The Appellant's mitigation was duly considered. The sentences are not excessive. They were ordered to run consecutively because of the fines imposed.

8. In the circumstances, the appeal partially succeeds in the terms that the trial court's sentences in hereby affirmed save that the same do run concurrently.

Orders accordingly.

Dated and delivered at Machakos this 27th day of March, 2019.

D. K. KEMEI

JUDGE