



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL REVISION NUMBER 742 OF 2018**

**CHARLES LETIPILA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Applicant, **Charles Letipila** and another were charged with two offences in Criminal Case No. 2282 of 2016 at the Chief Magistrates Court at Kibera. In count 1, they faced the offence of possession of wildlife trophy contrary to **Section 95** of the **Wildlife Conservation and Management Act, 2013**. The particulars thereof were that on the 24<sup>th</sup> day of May, 2016 at around 1300hrs at Taji Mall Matatu Stage of Eastern Bypass within Nairobi County, they were jointly found in possession of wildlife trophies namely: three (3) pieces of elephant tusks weighing 9Kgs with a street value of Kshs. 900,000/=, without a permit.

2. In count 2, they faced the offence of dealing in wildlife trophy contrary to **Section 84(1)** as read with **Section 92** of the **Wildlife Conservation and Management Act, 2013**. The particulars were that on the 24<sup>th</sup> day of May, 2016 at around 1300hrs at Taji Mall Matatu Stage of Eastern Bypass within Nairobi County, they were jointly found in possession of wildlife trophies namely: three (3) pieces of elephant tusks weighing 9Kgs with a street value of Kshs. 900,000/=, without a permit.

3. They denied the charges but after a full trial, they were both convicted and sentenced to serve five (5) years imprisonment on each count. The sentences were ordered to run concurrently.

4. The Applicant is now seeking a review of the sentences passed against him through an application filed herein on 20<sup>th</sup> July, 2018. The application is supported by a self-sworn affidavit in which he has deposed that he is remorseful for the offence committed. He asks the court to consider that he is a first offender. He also asks that the period of one year ten months spent in remand during trial be considered and be deducted from his sentence upon review.

5. In his oral submissions before this court, the Applicant prayed for leniency. He submitted that he has since learnt life support skills such as detergent making, entrepreneurship, theology and also undergone a mentorship program while in prison. He also sought this court's intervention on account of poor health. He submitted that he is HIV positive and also has chest and ear problems. Finally, he stated that he is the sole bread winner and therefore prays that he be set free.

6. It was however the view of learned State Counsel, Ms. Akunja for the Respondent that the sentence was legal and as such, the Applicant should serve the remainder of the same.

7. **Section 95** of the **Wildlife Conservation and Management Act, 2013** provides for a sentence of a fine of not less than one million shillings or imprisonment for a term of not less than five years or to both to both such fine and imprisonment, upon conviction. On the other hand, **Section 92** of the **Act** provides for a sentence of a fine of not less than twenty million shillings or imprisonment for life or to both such fine and imprisonment, upon conviction.

8. I have carefully considered the Applicant's mitigation and particularly the fact that he was a first offender. I am also alive to the fact that poaching is a big menace to this country and runs against the wildlife conservation efforts by our government. All the same, the value of the wildlife trophies in this case namely Kshs. 900,000/= was not so high compared to the millions of shillings that seasoned poachers make from this illegal business. I am also aware of the *Supreme Court decision in **Francis Karioko Muruatetu & Another vs. Republic** which declared mandatory sentences unconstitutional.*

9. **In the premises, I am minded to exercise my revisionary powers under Section 362** as read with **Section 364** of the **Criminal Procedure Code** to review the five years' imprisonment imposed on each of the two counts to three years imprisonment. I set aside the five years jail term and substitute it with three years imprisonment for each of the counts. The sentences shall run concurrently. The Applicant has been in remand throughout the trial and as at now has cumulatively been in custody for three and about two months. He has therefore served the sentence. I order that he be forthwith set free unless otherwise lawfully held. It is so ordered.

**DELIVERED AND DATED THIS 31<sup>ST</sup> DAY OF JULY 2019.**

**G.W. NGENYE-MACHARIA**

**JUDGE**

**In the presence of:**

1. *Applicant in person*

2. *Miss Akunja for the Respondent.*