

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAHURURU

CRIMINAL REVISION NO. 7 OF 2019

(Originating from Nyahururu CMCR.733 of 2019 before Hon. C. M. Muhoro (RM))

DIRECTORATE OF PUBLIC PROSECUTION (D.P.P.).....APPLICANT

V E R S U S

CHIEF MAGISTRATE'S

COURT – NYAHURURU.....RESPONDENT

RULING ON REVISION

The accused persons, namely, Jeremiah Loro Iria, Philip Ngasike Ewoi and Wilfred Lototo Lemuruti were charged with the offence of being in illegal possession of wildlife trophy contrary to Section 95 (d) of the Wildlife Conservation and Management Act 2013.

They were alleged to have been found in possession of wildlife trophy namely Zebra meat weighing 4.5kgs without a permit on 12/04/2019, at Veterinary village in Laikipia. On 24/05/2019, Accused 1 and 2 pleaded guilty and were sentenced to pay a fine of Kshs. 20,000/- or five months imprisonment.

The prosecution Counsel has placed this file before this court for purposes of revision for reasons that the provisions of law under which the accused were charged, that is Section 95 provides for a minimum sentence of one million Kenya shillings and not less than twelve months imprisonment or oh fine and imprisonment.

I have considered the above provisions and the Supreme Court decision on ***Francis Karioko Muruatetu and Another vs Republic, SC Petition 16/2015***, where the Supreme Court declared Section 204 of the Penal Code that provided for mandatory death sentence unconstitutional for reasons that it denied the court discretion in sentencing. The same decision has been adopted by the Court of Appeal in other decisions including the decision of ***Jarred Koita Injiri vs Republic, CRA 83/2014***, where the Court of Appeal held that guided by the decision in ***Muruatetu's case***, the mandatory sentence stipulated under Section 8(2) of the Sexual Offences Act was unconstitutional. The result is that the court is not bound by the mandatory provisions on sentences under some provisions of the law. The court can exercise its discretion in sentencing by considering the gravity of the offence, whether the accused pleaded guilty and any other mitigating or aggravating factors.

In the present case, the accused persons pleaded guilty and not waste the court's time; the amount of wildlife trophy was 4.5kgs although no value was put to it. I find that there are no aggravating circumstances to warrant the court to interfere with the sentence and the invitation by the State to review the sentence upwards is declined.

Delivered, Signed and Dated at NYAHURURU this 26th day of July, 2019.

R.P.V. Wendoh

JUDGE