



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO 52 OF 2017

MARIA LERAMPAE SUPULLO.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(Appeal from original Sentence dated 10/03/2017 in Nanyuki CM Criminal Case No 1403 of 2015 – E Bett, SRM)

J U D G M E N T

1. The Appellant herein, **MARIA LERAMPAE SUPULLO**, was convicted after trial of ***being in possession of wildlife trophy*** contrary to **section 95** of the ***Wildlife Conservation and Management Act, No 47 of 2013*** (the Act). She was sentenced as follows -

“Accordingly, the Accused shall pay a fine of one million shillings and in default thereof to serve five (5) years imprisonment.”

2. The Appellant appealed only against the sentence, more particularly, the default sentence. She did not pay the fine and was serving the default sentence when her appeal was heard on 25/09/2019. Learned prosecution counsel for the Respondent readily conceded the appeal against the default sentence upon the ground that the same was unlawful in view of the provisions of **section 28(2)** of the ***Penal Code***.

3. Immediately upon hearing the Appellant’s appeal on 25/09/2019 I allowed the appeal against the default sentence and directed that she be set at liberty forthwith unless otherwise held. The reasons for allowing the appeal are contained in this judgment.

4. Section 95 of the Act provides as follows –

“95. Any person who keeps or is found in possession of 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.”

5. It is immediately clear that a trial court has three options in sentencing under this section –

- a) **It may fine the offender not less than Kshs.1million; OR**
- b) **It may imprison the offender for a term of not less than five years; OR**
- c) **It may both fine and imprison the offender.**

This is a discretion found in many criminal statutes, including the Penal Code, and a casual perusal of the Penal Code, for instance, will readily confirm it.

6. In the present case, the trial court chose the first option; that is, it fined the Appellant KShs 1 million and imposed a ***default*** sentence in the event that she failed to pay the fine. The court did **not** take the second option and imprison the Appellant for a term of five years. **Nor** did it take the third option and sentence the Appellant to **both** a fine and imprisonment. It only fined the Appellant KShs 1 million and imposed a ***default*** sentence of five years imprisonment.

7. The limits of default sentences are set out in section 28(2) of the Penal Code as follows –

“In the absence of express provisions in any written law relating thereto, the term of imprisonment or detention under the

Detention Camps Act ordered by a court in respect of the non-payment of any sum adjudged to be paid for costs under section 32 or compensation under section 31 or in respect of the non-payment of a fine or of any sum adjudged to be paid under the provisions of any written law shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any such case the maximum fixed by the following scale –

(Emphasis Supplied)

Amount Maximum Period

Not exceeding Shs 500.....14 days

Exceeding Shs 500

but not exceeding Shs 2,500.....1 month

Exceeding Shs 2,500 but

not exceeding Shs 15,000..... 3 months

Exceeding Shs 15,000 but not

exceeding Shs50,000.....6 months

Exceeding Shs 50,000.....12 months.”

8. In the present case therefore, the maximum term of imprisonment that the trial court could have imposed upon the Appellant in default of payment of the fine was 12 months. The term of five (5) years imprisonment it imposed was thus unlawful.

9. Having been sentenced on 10/03/2017, the Appellant had long served the lawful default sentence of 12 months imprisonment by the time her appeal was heard. That was why I directed her immediate release.

DATED AND SIGNED AT NANYUKI THIS 30TH DAY OF OCTOBER 2019

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 31ST DAY OF OCTOBER 2019