REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL APPEAL CASE NO.82 OF 2015

SILAS MUGENDI IRERI.....APPELLANT

VS

REPUBLIC.....RESPONDENT

JUDGEMENT

The appellant Silas Mugendi Ireri was charged with the offence of conveying into a National Park hunting tools contrary to section 102(1)(f) of the Wildlife Conservation and Management Act 2013 in count 1. Particulars are that Silas Mugendi ireri on the 20th day of September 2014 at around 11.30 hrs at Kina Triangle area within Meru National Park in Meru county entered the said Park while in possession of hunting tools namely 7 snares, 1 panga and 2 empty sacks with intent of hunting for bush meat.

In count II the appellant was charged with the offence of entering a National Park contrary to Section 102(1)(a) of the Wildlife Conservation and Management Act 2013. Particulars are that Silas Mugendi Ireri on the 20th day of September 2014 at around 11.30 hrs at Kina Triangle area within Meru National Park in Meru county entered the said park without authorization. When appellant was presented before Maua Chief Magistrates court on 22nd September 2014 and charges read over to him in Kimeru language he responded:

"It is not true. I was chasing a monkey which had captured my chicken". A plea of not guilty was entered. On 21st October 2014 when he sought to change plea, the charge was again read to him and he respondent:-

" I was chasing animals that were eating my farm produce"

A plea of not guilty was again entered and trial set for 4th December 2014. On 4.12.2014 hearing didn't proceed and trial was adjourned to 16.3.2015. On 16.3.2015 trial was again adjourned to 13.4.2015.

The prosecution called 3 witnesses who testified in support of the charges and appellant in his unsworn statement deemed having committed the offences preferred against him and claimed that the KWS officers found him at his farm which borders the National park where was guarding his farm against wildlife which usually destroyed his crops and when he scared the animals, the animals ran back into the park and the KWS officers thought he was hunting. He said KWS officers arrested him and took him to their offices where he was beaten using the snares after which he was taken to Maua police station.

Based on the prosecutions 3 witnesses the trial court found the appellant guilty and convicted him and fined him 200,000/= in each count ID to serve 3 years imprisonment. It is against the conviction and the sentence that appellant appealed to this court on the grounds that the evidence of PW1 and PW2 were contradictory; that the trial court erred in not considering his defence; that the trial court erred in law and fact by failing to indicate that the sentences were either concurrent or consecutive; that the trial court erred in law and fact by passing unlawful sentence.

The appellant at the hearing of the appeal filed an application supported, by an affidavit in which he prayed that the court hears and determines the application under Sections 362 and 364 of the Criminal Procedure Code and admit and give any other orders that it deems just for reasons he is a 1st offender; that the sentence was excessive in the circumstances; that he has become a law abiding citizen; that he is remorseful and willing to engage in lawful employment; he begged the court for leniency. He prayed that he be sentenced to non custodial sentence; He said he is suffering from TB and that he is the sole bread winner to his young family. He asked that his sentence be reviewed.

The Respondent(state) on the other had opposed appeal and argued that the conviction and sentence were within the provisions of the law and that the evidence of PW1 and PW2 relied upon by the trial magistrate to convict the appellant was consistent.

It was controverted that the trial court didn't consider the appellants defence. It was argued that issue of whether sentence was to run concurrently or consecutively doesn't arise as the appellant was to pay a fine or serve 3 years imprisonment. The Respondent urged the court to uphold the conviction and sentence as appeal lacked merit.

The appellant has been in custody since 22nd September 2014 when he was arrested and on 15th July 2015 when he was convicted and sentenced by the trial magistrate. The default sentence of 3 years was illegal considering that the default sentence under section 102(1)(a) 8 (f) is 2 years imprisonment.

The trial magistrate ought to have specified whether the sentence was in respect of count 1 or count (2) and like the appellant prays specify whether the sentences if they apply to both counts, if concurrent or consecutive.

I do therefore find that although the appellant was rightly convicted the sentence was not clear. Whether applied to the 1st or 2nd count;

Secondly the default sentence of 3 years was against the provision of the law which is 2 years;

I do find that appellant has served more than enough period in custody and should be set at liberty forthwith unless lawfully detained. Orders accordingly.

HON. A.ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON

22nd FEBRUARY 2018.

In the presence of:

Appellant: Present in person

Respondent: Mrs Mwathi for state

HON. A.ONG'INJO

JUDGE