

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 22 OF 2018

MOSES OLUBI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Moses Olubi was convicted of being in possession of **wildlife trophy** contrary to **Section 95** of the **Wildlife Conservation and Management Act 2013**. The particulars of the offence were that on 17th October 2015 at Kangemi in Nairobi County, the Applicant was found in possession of two pieces of polished elephant ivory weighing 8kg with a street value of Kshs.800,000/- without a permit. He was sentenced to pay a fine of Kshs.1,000,000/- or in default he was ordered to serve five (5) years imprisonment. The Applicant did not appeal against the conviction. He has applied to this court for a revision of the sentence.

The Applicant states that he is contrite and remorseful and pleads with the court to exercise its discretion and revise the sentence that was meted upon him. He was of the view that the custodial sentence that was meted on him was harsh and excessive in the circumstances. He told the court that he was 52 years old and was the sole provider of his family. His cattle had died due to drought and therefore his family had become destitute. He pleaded with the court to sentence him to serve an alternative sentence to the custodial one. Ms. Atina for the State opposed the application. She submitted that the Applicant was sentenced to serve the minimum custodial sentence provided by the law. The sentence was legal. It was also lenient taking into consideration the entire circumstances of the case. She urged the court not to interfere with the sentence.

This court has carefully considered the Applicant's plea for reduction of custodial sentence. The Court of Appeal in **Ahmad Abolfathi Mohammed & Another –vs- Republic Criminal Appeal No.135 of 2016** (unreported) held at Page 25 of its judgment as follows:

“As what is challenged in this appeal regarding sentence is essentially the exercise of discretion, as a principle this Court will normally not interfere with exercise of discretion by the court appealed from unless it is demonstrated that the court acted on wrong principle, ignored material factors; took into account irrelevant considerations; or on the whole that the sentence is manifestly excessive. In Bernard Kimani Gacheru v Republic, Cr App No. 188 of 2000 this Court stated thus:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with the sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist. (See also Wanjema v. Republic [1971] E.A.493.”

This court has perused the proceedings of the trial court. It was evident to this court that the custodial sentence imposed on the Applicant was legal. The Applicant was released on bail during his trial. He cannot therefore claim that he was in remand custody during his trial. The trial court properly exercised its discretion when it sentenced the Applicant to serve the custodial sentence. This court sees no reason or justification to interfere with it.

In the premises therefore the application for revision of sentence lacks merit and is hereby dismissed. The Applicant shall serve the sentence imposed by the trial court. It is so ordered.

DATED AT NAIROBI THIS 21ST DAY OF MARCH 2018

L. KIMARU

JUDGE