

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAROK

CRIMINAL APPEAL NO. 1A OF 2017

[From the original conviction and sentence dated 6/5/2015 in

Criminal Case No. 970/2014 in the Senior Principal Magistrate's

court at Narok, R. v. Joel Kipkorir Rotich]

JOEL KIPKORIR ROTICH.....APPELLANT

- VERSUS -

REPUBLIC.....RESPONDENT

JUDGMENT

1. The appellant has appealed against his sentence of 5 years imprisonment in respect of being found in possession of wildlife trophies namely four pieces of ivory contrary to section 95 as read with section 92 of the Wildlife Conservation and Management Act of 2013, which was recorded against him by the Court of Senior Principal Magistrate at Narok on 6th May, 2015.

2. I have reassessed the evidence upon which the appellant is convicted and found that he was convicted on ample evidence. The appellant has complained in ground one that he did not benefit from the remission and pardon. The appellant in ground one is complaining that other prisoners were granted amnesty by the President while he himself was not a beneficiary. This is clear from his ground one of his grounds of appeal in which he urges the court to be lenient. The issue of remission is a matter within the jurisdiction of the Presidency and for this reason I find that this ground is without merit and is hereby dismissed.

3. In ground two, the appellant has stated that he is remorseful. This ground of appeal is without merit and is hereby dismissed. In ground three, the appellant has stated that in ground four that he was the first offender and finally he has stated that he had acquired enough knowledge which is important to this nation.

4. I find that the trial court took into account that he was first offender and that he was single parent with children. These were the mitigations put forward by the appellant. Furthermore, the trial court found that the appellant was convicted of a serious offence, because it threatened our heritage and was prevalent in Narok County and proceeded to sentence the appellant to five years imprisonment.

5. In sentencing the appellant the trial court took into account the principles applicable to sentencing an accused person in terms of section 28 of the Penal Code (Cap 63) of Laws of Kenya. Sentencing is a matter for the discretion of a trial court and according to *Wanjema v. R. (1971) EA 493*, an appeal court may only interfere with the discretion of the trial court if the following factors are shown to exist. First, where the trial court is shown to have overlooked some material factor. Second, where the trial court is shown to have taken to account some immaterial factors and third, where the trial court is shown to have acted on a wrong principle and four, where the trial court has shown to have imposed a sentence that is manifestly excessive or manifestly lenient so as to amount to a failure of justice.

6. I find that the trial court did not commit any errors of fact or law in sentencing the appellant to five years imprisonment. It therefore follows that this court is not entitled to interfere with sentence of five

years. In the circumstances, the sentence of five years imprisonment is confirmed and it is hereby dismissed.

Judgement delivered in open court this 27th day of February, 2017. In the presence of the Appellant and Mr. Mukofu for respondent.

J. M. Bwonwonga

Judge

27/2/2017