



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT VOI**  
**CRIMINAL APPEAL NO 8 OF 2017**

**EMMANUEL CHARO KARISA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(From original conviction and sentence in Criminal Case Number 605 of 2016 in the Senior Principal Magistrate's Court at Voi delivered by Hon M. Onkoba(SRM) on 8<sup>th</sup> August 2016)**

**JUDGMENT**

**INTRODUCTION**

1. The Appellant herein, Emmanuel Charo Karisa, was charged on two (2) Counts. Count I was in respect of entering a National Park contrary to Section 102(1)(a) of the Wildlife Conservation and Management Act 2013 (Laws of Kenya) (hereinafter referred to as "the Act"). Count II related to the offence of being in possession of hunting apparatus contrary to Section 102(1)(f) of the Act.

2. The particulars of the Counts were as follows :-

**COUNT I**

**“On the 7<sup>th</sup> day of August 2016 at around 1930 hrs at Kormondo area of Tsavo East National Park within Taita Taveta County, jointly with others not before the court you were found within the National reserve without authorization.”**

**COUNT II**

**“On the 7<sup>th</sup> day of August 2016 at around 1930 hrs at Kormondo area of Tsavo East National Park within Taita Taveta County, jointly with others not before the court you were found in possession of hunting apparatus to wit one (1) panga and two (2) torches one attached with a horn with (sic) the purpose of hunting.”**

3. On 8<sup>th</sup> August 2016, the Appellant herein pleaded guilty to both Counts. He admitted the facts that were read to him. In his mitigation, he stated that he had nine (9) school going children and that he had gone to hunt for purposes of feeding his family. The Learned Trial Magistrate, Hon M. Onkoba (Principal Magistrate) fined him Kshs 200,000/= or in default to serve two (2) years imprisonment in respect of Count I and similarly for Count II, a fine of Kshs 200,000/= or in default to serve two (2) years imprisonment. The Learned Trial Magistrate ordered that both sentences run consecutively.

4. Being dissatisfied with the said judgment, on 20<sup>th</sup> January 2017, the Appellant filed a Notice of Motion application seeking leaving to file an appeal out of time. The said application was allowed and the Petition of Appeal was deemed to have been duly filed and served.

5. The only Ground of Appeal the Appellant relied upon at the time was that the said Learned Trial Magistrate erred in both law and fact when he connected him without considering that the mode of arrest was instituted hence putting him to a great disadvantage. Notably, this court was unable to understand or discern the gist of the said Ground of Appeal from the way it had been drafted.

6. When the matter came up on 25<sup>th</sup> July 2017, both the Appellant and counsel for the State asked this court to rely on their respective Written Submissions in their entirety. This Judgment is therefore based on the said Written Submissions.

## **LEGAL ANALYSIS**

7. In his Written Submissions, the Appellant herein pointed out that he only pleaded guilty to the charges that had been preferred against him after he was persuaded to do so by one of the Kenya Wildlife Services (KWS) officer on the pretext that **“they would look for a way to harmonise the case that would favour him.”** He therefore urged this court to quash the conviction and also set aside the sentence which he submitted was manifestly excessive and harsh in the circumstances of the case herein.

8. On its part, the State submitted that the Charges were read to the Appellant in a language that he understood before he pleaded guilty to the same. Facts were read to him and he was also given an opportunity to mitigate before he was sentenced. It therefore argued that the Appellant’s plea of guilty was unequivocal as all the procedures had been duly followed and that he could not therefore purport to have been coerced into pleading guilty to the said charges.

9. It further submitted that the Learned Trial Magistrate acted within the law when he fined the Appellant and sentenced him to imprisonment. However, it averred that the said Learned Trial Magistrate ought to have ordered that the sentences run concurrently as the two (2) offences occurred at the same time and date. In this regard, it relied on the case of **Peter Mbugua Kabui vs Republic[2016] eKLR.**

10. Notably, once an accused person pleads guilty to an offence, the jurisdiction of the appellate court is limited to looking at the extent and legality of the sentence that he was given. This limitation is provided for in Section 348 of the Criminal Procedure Code Cap 75 (Laws of Kenya) where it is stated that:-

**“No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.”**

11. It therefore followed that as the Appellant had pleaded guilty to both Counts, this court could only look at the extent and legality of the penalties that was meted upon him by the Learned Trial Magistrate. The Appellant’s arguments that he was tricked into pleading guilty to both Counts was not an issue that this court could verify as he admitted the facts when they were read to him and further incriminated himself during his mitigation when he admitted that he had gone to hunt for purposes of feeding his children.

12. Section 102(a) and Section 102(f) of the Act under which the Appellant herein was charged stipulate as follows:-

**“Any person who—**

**a. enters or resides in a national park or reserve otherwise than under licence, permit or in the course of his duty as authorized officer or a person lawfully employed in the park or reserve as the case may be;**

**f. conveys into a protected area or is found within a protected area in possession of any firearm, ammunition, arrow, spear, snare, trap or similar device without authorization;**

**commits an offence and is liable on conviction to a fine of not less than two hundred thousand shillings or to imprisonment of not less than two years or to both such fine and imprisonment.”**

13. As can be seen hereinabove, the Learned Trial Magistrate’s hands relating to the extent of the fine he could impose and the sentence he could mete upon the Appellant were tied. Evidently, the minimum fine the Learned Trial Magistrate could impose on him was a fine of **not less than Kenya Shillings two hundred (Kshs 200,000/=)** or a minimum sentence **of two(2) years imprisonment** (emphasis court). He could also exercise his discretion by fining the Appellant in addition to sentencing him as aforesaid.

14. Evidently, the Learned Trial Magistrate did not impose on the Appellant a fine and imprisonment as a penalty. He instead fined him Kshs 200,000/= or in default to serve two (2) years imprisonment. This was a more lenient sentence. In view of the fact that there were no previous records of the Appellant’s conviction, this court was satisfied that the penalty that was imposed upon him by the Learned Trial Magistrate for each of the offence was fair and was not manifestly excessive.

15. Having said so, this court agreed with the Appellant’s submissions that the Learned Trial Magistrate’s order that the sentences were to run consecutively was manifestly harsh and excessive in the circumstances herein. Indeed, as the State rightly argued, the two (2) charges that had been preferred against the Appellant arose out of the same transactions in which case the sentences that were meted upon him ought to have run concurrently.

16. Indeed, the Appellant could not have conveyed the hunting apparatus into Tsavo East National Park without first having entered the said National Park. Whereas the offences under the Act were distinct, they occurred on the same date and time as a result of which the sentences ought to have run concurrently. The Court of Appeal rendered itself in the case of **Peter Mbugua Kabui vs Republic** (Supra) when it stated as follows:-

**“As a general principle, the practise is that if an accused person commits a series of offences at the same time in a single act/transaction a concurrent sentence should be given. However, if separate and distinct offences are committed in different criminal transactions, even though the counts may be in one charge and in one trial, it is not illegal to mete out a consecutive term of imprisonment.”**

## **DISPOSITION**

17. For the foregoing reasons, the upshot of this court’s decision was that the Appellant’s Appeal that was lodged on 20<sup>th</sup> January 2017 was successful in respect of the sentence and the same is hereby allowed in that respect only.

18. This court hereby upholds the conviction and sentence of the fine of Kshs 200,000/= and in default, to serve two (2) years respectively for each of the two (2) Counts to wit Count I and Count II that were meted upon him by the Trial Court as the same were lawful and fitting. However, this court sets aside the order that the default sentences for the two (2) Counts will run consecutively and replaces the same with an order that default sentences for the two (2) Counts shall run concurrently from the date of conviction.

19. It is so ordered.

**DATED and DELIVERED at VOI this 19<sup>th</sup> day of October 2017.**

**J. KAMAU**

**JUDGE**

In the presence of:-

Emmanuel Charo Karisa-Appellant

Miss Anyumba for State

Josephat Mavu– Court Clerk