



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT CHUKA**

**CRIMINAL REVISION NO. 9 OF 2017**

*(From original conviction and sentence in*

*Criminal Case No. 864 of 2014 of the Chuka*

*Magistrate's Court at Chuka.)*

**JOSIAH MIRITI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

1. **JOSIAH MIRITI** the applicant herein along two other persons were charged with being in possession of Wildlife Trophy contrary to **Section 95** of the **Wildlife Conservation and Management Act 2013** vide **Chuka Senior Principal Magistrate's Court No. 864 of 2014**. The applicant and co-accused denied the charge but upon trial the applicant was found guilty and convicted. He was sentenced to serve five years imprisonment or pay a fine of Kshs.2 million.

2. The applicant has now moved this court for revision of his sentence under the provisions of **Sections 362 and 364** of the **Criminal Procedure Code**. The grounds upon which the application has been brought are as follows namely:-

(i) *That he is a sole bread winner.*

(ii) *That he is old and may not survive the sentence*

(iii) *That he is remorseful*

(iv) *That he has been in custody since 2014 and that he never got a chance to mitigate.*

3. This court did call for the lower court file and upon perusal established that indeed the applicant was found guilty of the offence under **Section 95** of the **Wildlife Conservation and Management Act No. 47 of 2013**. The provision provide as follows:-

***" Any person who keeps or is found in possession of a wildlife trophy or deals in a wildlife trophy or manufactures any item from a trophy without a permit issue 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 of a term of not less than 5 years or to both such imprisonment and fine."***

4. The trial court upon finding the applicant guilty really had no option but to impose a sentence prescribed by law and where a statute prescribes a minimum sentence, the court's hands are tied because a court cannot pass a sentence below the prescribed limit. The propriety, legality and correctness of the sentence passed by the trial court in this instance cannot be challenged because the same was proper in accordance with the law as cited above.

5. I have also noted from the proceedings that the applicant herein was give a chance to mitigate and the only mitigation factor raised was that he had been in custody for two years. The trial court duly considered the mitigation raised but again as I have said the trial court's hands were tied by the minimum sentence prescribed by law. I have perused through the proceedings and the same are regular and I find no basis to interfere with the sentence passed.

In the premises the application for revision of sentence is not merited. The same is disallowed for the above reasons.

**Dated and delivered at Chuka this 29<sup>th</sup> day of November, 2017.**

**R.K. LIMO**

**J U D G E**

**29/11/2017**

Ruling signed, dated and delivered in open court in the presence of the Applicant in person and Machirah for state.

**R.K. LIMO**

**J U D G E**

**29/11/2017**