



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 79 OF 2012

JOSEPH KIOKO APPELLANT

VERSUS

REPUBLIC

(Being an appeal from the conviction and sentence of Hon. M.O. Kizito Senior Resident Magistrate delivered on 20/06/2012 in Makindu Principal Magistrate Criminal Case No. 512 of 2012)

(Before Hon. B. Thurairaja J)

J U D G M E N T

1. The Appellant, **Joseph Kioko** was charged jointly with another as follows:-

Count I – dealing in Government trophy contrary to **section 43 (4) (B) of Wildlife Conservation and Management Act Chapter 376 Laws of Kenya.**

The particulars of the offence were that on the 19th day of June 2012, **Kikwasuni area in Kibwezi District within Eastern Province**, jointly were found selling thirty five (35) pieces of elephant tusks weighing 18 kilos and two pieces of leopard skins with a street value of Kshs.220,000.00 without a dealer’s license.

Count II – Illegal possession of Government trophy contrary to **section 42 (1) (B) as read with 56 (2) of Wildlife Conservation and Management Act Chapter 376 Laws of Kenya.**

The particulars of the offence were that on the 19th day of June 2013, **Kikwasuni area of Kibwezi District within Eastern Province**, jointly were found in possession of thirty five (35) pieces of elephant tusks, two (2) leopard skins, 18 pieces of elephant tails and four pieces of elephant teeth without a certificate of ownership thereof.

Count III – Failing to make a report of obtaining possession of Government trophy contrary to **section 39 (3) (A) of Wildlife Conservation and Management Act Cap 376 Laws of Kenya.**

The particulars of the offence were that on the 19th day of June 2012, **Kikwasuni area of Kibwezi District within Eastern Province**, jointly failed to report to authorized officers of being in possession of thirty five (35) pieces of elephant tusks, two leopard skins, 18 pieces of elephant tail and four elephant teeth being the property of the government.

2. When the Appellant was arraigned before the trial court, he pleaded guilty and was convicted and sentenced as follows:-

- **Count I – twelve (12) months imprisonment.**
- **Count II – six (6) months imprisonment.**
- **Count III – two (2) months imprisonment.**

3. The Appellant was aggrieved by both the conviction and sentence and appealed to this court on the following grounds:-

- **That the plea was not unequivocal.**
- **That the facts read out by the prosecution did not disclose any offence.**
- **That the sentence imposed was harsh and excessive.**

4. The appeal was canvassed by way of written submissions which I have duly considered.

5. This being a first appeal, this court is duty bound to re-evaluate the evidence and the record afresh and come to its own conclusions and inferences – *See Okeno –vs- Republic (1972) EA 32.*

6. The legal principles to be applied in plea taking in all Criminal Cases were well enunciated in the case of **Adan vs Republic [1973] EA 445** where the Court held:-

(i) The charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands.

(ii) The accused’s own words should be recorded and if they are an admission, a plea of guilty should be recorded.

(iii) The prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts.

(iv) If the Accused does not agree with the facts or raises any question of his guilt his reply must be recorded and change of plea entered.

(v) If there is no change of plea a conviction should be recorded and a statement of facts relevant to sentence together with the accused’s reply should be recorded.”

7. I have perused the lower court record and I am satisfied that the learned trial magistrate employed the correct procedures of plea taking.

8. The facts read out to the court do not disclose any offence as charged. The facts simply state that the Appellant lead the police to the home of his co-accused where the game trophies in question were recovered from. The facts do not disclose whether the Appellant was dealing in the said items or how he was connected to the same. The facts do not support the offence as charged. The plea can therefore not be said to be unequivocal. The appeal has merits and is allowed. The Appellant is at liberty unless otherwise lawfully held.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 29th day of April 2015

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B. THURANIRA JADEN

JUDGE