



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NOS.251, 252 AND 253 OF 2014

(AS CONSOLIDATED BY COURT)

NGO HONG QUAN.....1<sup>ST</sup> APPLICANT

HOANG CONG THANH.....2<sup>ND</sup> APPLICANT

NGUYEN VAN HAI.....3<sup>RD</sup> APPLICANT

*VERSUS*

REPUBLIC.....RESPONDENT

RULING

The Applicants were charged with various counts of **being in possession of game trophy** contrary to **Section 95 of Wildlife Conservation and Management Act 2013**. When they were arraigned before court, they pleaded guilty to the charge. They were convicted on their own plea of guilty. They were ordered to pay fines ranging between Kshs.1 million and Kshs.2 million or in default they were ordered to serve between five (5) and six (6) years imprisonment. The Applicants were aggrieved by their conviction and sentence and have filed their respective appeals against the said conviction and sentence. Pending the hearing and determination of the appeals, the Applicants have applied to be admitted to bail. Their applications are supported by the annexed affidavit of their advocate, Bosire Daniel Kirera.

During the hearing of the applications, this court heard oral rival submission made by Mr. Ongegu for the Applicants and by Ms. Aluda for the State. This court has carefully considered the said submission. Both counsel were aware of the principles that guide this court in determining whether or not to grant the Applicants' bail pending the hearing of the appeal. The Applicants are required to establish that their respective appeals have high chance of success. There must also be exceptional or unusual circumstances that will persuade this court to release the Applicants on such bail. The Applicants were arrested while in possession of game trophies. They were apprehended at Jomo Kenyatta International Airport, Nairobi while on transit from Angola to Vietnam. According to Mr. Ongegu, the Applicants had no intention of importing the said game trophies into Kenya. It was not unlawful for the Applicants to be in possession of the said game trophies in the place of origin of their flight and in the place of their destination. Ms. Aluda opposed the application on the grounds that the Applicants had pleaded guilty to the charge. She was of the view that if the Applicants were released on bail, they would be a flight risk. She submitted that Kenya was under international obligation to protect endangered species from decimation by those who were engaging in sale of products from such wildlife heritage.

Having evaluated the facts of this case, it was clear to this court that the Applicants cannot be released on bail pending the hearing of their respective appeals. The Applicants are foreigners. They have been sentenced by the lower court to pay a hefty fine or in default to serve a lengthy term in prison. This court agrees with the State that the Applicants may be tempted to flee from the jurisdiction of the court if they are released on bail. The Applicants have no fixed abode in Kenya. They are unlikely to get Kenyan sureties to post bond on their behalf. As regard their appeals, this court was not persuaded, at this stage of

the proceedings, that the Applicants, prima facie, had appeals with high chances of success.

In the premises therefore, the respective applications by the Applicants to be released on bail pending the hearing of their respective appeals lacks merit and is hereby dismissed. It is so ordered.

**DATED AT NAIROBI THIS 19<sup>TH</sup> DAY OF NOVEMBER 2014**

**L. KIMARU**

**JUDGE**