



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**REVISION NO. 99 OF 2013**

**SIMON DAVID HARRIS.....1<sup>ST</sup> APPLICANT**

**RICHARD WANGWE ADERA.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**REVISION ORDER**

Simon David Harris and Richard Wangwe Adera appeared before the Chief Magistrate's Court at Naivasha charged with three offences namely:-

1. **Possession of Government trophy contrary to Section 4(1)(b) as read with Section 521(1) of the Wildlife (conservation and Management) Act Cap 476 Laws of Kenya;**
2. **Failing to make a report of obtaining possession of Government Trophy contrary to Section 39(3)(a) of the Wildlife (Conservation and Management) Act;**
3. **Dealing in Government trophy contrary to Section 39(3)(b) of the Wildlife (Conservation and Management) Act.**

The accused pleaded guilty to the three charges, convicted and were sentenced as follows:-

Count 1 – Each to serve 3 years imprisonment;

Count 2 – Each to serve one year imprisonment;

Count 3 – Each to serve one year imprisonment.

Sentences were ordered to run concurrently. It was further ordered that the 1<sup>st</sup> accused be repatriated to his country after completion of the sentence.

This matter was placed before me for purposes of revision pursuant to the supervisory powers donated to this court under **Section 362** as read with **Section 364** of the **Criminal Procedure Code**. On the first charge, the accused persons were charged under **Section 41(1)(b)** of the **Wildlife Act**. **Section 41(1)(b)** does not exist. Perhaps they should have been charged under **Section 42(1)(b)** of the **Act Cap 376 Laws of Kenya**. Since **Section 41(1)(b)** does not disclose any offence as charged, the accused persons are hereby acquitted of the charge.

The second charge was under **Section 39(3)(a)** of the **Act**. A person found guilty under that subsection is liable to a fine not exceeding Kshs.10,000/- or to imprisonment for a term not exceeding 12 months or to both.

In Count 3, they were charged under **Section 39(3)(b)**. One found guilty under that section is liable to a fine of Kshs.10,000/- or imprisonment for a term not exceeding 12 months or to both. Before sentence the court considered the fact that accused persons were first offenders, the value of the subject matter, which the prosecution said stood at Kshs.300,000/- in Kenya and Kshs.1 million abroad, and the fact that the offences are prevalent in the country, that the said snakes are a rare species found only in Kenya and it seems the 1<sup>st</sup> accused had come to Kenya specifically to get the snakes and therefore to commit the said

offences. Taking all the above into account, the fact that poachers are coming into the country and in collusion with the local people, depleting the country of its treasured wildlife. In view of all the above, I decline to interfere with the magistrate's exercise of discretion on the sentence in respect of Count 2 and 3. The sentences are lawful. The accused persons should serve 1 years imprisonment on each count, the sentences to run concurrently and the 1<sup>st</sup> accused be repatriated to his home country upon completion of the term. It is so ordered.

**DATED and DELIVERED this 29<sup>th</sup> day of October, 2013.**

**R.P.V. WENDOH**

**JUDGE**