



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MERU**

**REVISION NO. 194 OF 2011**

**MUSA HARUN & 5 OTHERS.....APPLICANTS**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING IN REVISION**

The matter was brought to the attention of the court by Messrs Mbogo & Muriuki advocate. The court invited submission by the above firm of advocates and the state.

The applicants were facing four counts as follows;

1. Count I for accused 1, 2, 3 & 4, on 30<sup>th</sup> day of May 2011 at No.98 area of Meru National Park in Meru Country were found destroying indigenous plants by grazing 900 goats and 400 cows within the said National Park without a written authority from the Director of Kenya Wild Life Services,
2. Count II for Accused 1, 2, 3 & 4, knowingly introducing domestic animals into a national park contrary to section 13(3) (f) as read with Section 56 of Wildlife conservation Management Act Cap 376 Laws of Kenya,
3. Count III for accused 1, 2, 3 & 4, deliberate disturbance of Wild Animals in the park contrary to section 13 (3) of Wildlife Conservation & Management Act Cap. 376 laws of Kenya,
4. Count for Accused 1, 2, 3 & 4, destruction of Natural Resources in the protected area contrary to Section 143 of Environmental Management & Conservation Act.

Mr. Mbogo submitted that even though the sentences were written in the law, they were excessive since the accused mitigated that they were forced by circumstances of drought to enter the Forest and National Parks, with their animals to look for water and pasture. Counsel urged the court to consider they walked 360 kilometers. Counsel urged the court to note that the court had declared the drought a National Disaster.

The accused pleaded guilty to the charge and were fined kshs.8000/= in default 3 months imprisonment on each count. Except for count 2 where maximum fine provided is kshs.5000/=, the rest of the fines were within the maximum provided under the law. In count 2 the fine imposed was beyond the maximum given under the law and is therefore illegal.

I did take into consideration that the applicants 2, 3, 5 and 6 have been in prison serving the default sentence since 31<sup>st</sup> May, 2011.

I take Judicial Notice of the fact the Government has declared the current drought a National Disaster. The plight which befell the six accused is a Natural issue.

While it is a serious threat to the Environment and to the National Parks to allow grazing of domestic animals in our Parks, it is inexcusable indifference to disallow a limited encroachment, with authority from the relevant Management, to preserve Domestic animal population. A balance must be struck. The government has a great role to play in this. It is the responsibility of the Government to preserve life and property of its citizens. Taking proactive actions, for instance, in drilling bore holes to provide water in our arid and semi-arid areas, before the draught becomes a national disaster, is one such measure which glaringly lacking.

The accused have served two months imprisonment. I think that they do not deserve to be in jail for what they did. It was beyond their control.

I will exercise powers of the court in revision under Section 362-364 of CPC and reverse/set aside the fines of 8000/= in default 3 months imprisonment in each sentence to imprisonment for the period already served.

I order that the appellants be set at liberty forthwith unless they are otherwise lawfully held. Those are my orders.

Dated, signed and delivered this 21<sup>st</sup> day of July, 2011.

**LESIT, J.**  
**JUDGE**