



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

**NAKURU**

**CRIMINAL APPEAL NOS. 227 & 228 OF 2011**

*(From original conviction and sentence in Criminal Case No. 3448 of 2011 of the Chief Magistrate's Court at Nakuru – W. Juma, CM).*

**NICKSON TAKI CHACHU.....1ST APPELLANT**  
**FREDRICK SITIENEI.....2ND APPELLANT**  
**VERSUS**  
**REPUBLIC.....RESPONDENT**

**JUDGMENT**

Nickson Taki Chachu and Fredrick Sitienei were arraigned before the Chief Magistrate's Court Nakuru, on 23<sup>rd</sup> September 2011 charged with the offence of unlawfully being in possession of a game trophy contrary to **Section 13(3)(e)** of the **Wildlife Act, No.16 of 1989, Cap 376 Laws of Kenya**. It was alleged that they were jointly in possession of a leopard skin to wit 2 kilograms, worth Kshs.50,000/- without a dealers license.

They pleaded guilty to the offence and after mitigation, each was fined Kshs.6,000/- in default 3 months imprisonment and in addition to serve 1 month imprisonment. They were aggrieved by the sentence and through the firm of Olali Cheche Adovcate, Nickson filed Appeal Number 227 of 2011 while Fredrick Sitienei filed Appeal Number 228 of 2011. The grounds upon which the appeal is preferred are that the magistrate erred in ignoring the mitigation by the accused; that the sentence is harsh and excessive in the circumstances and should be set aside; that being first offenders, the magistrate should have preferred a non custodial sentence. The appeals were consolidated and heard together as Appeal No. 228 of 2011. Mr. Nyakundi submitted that since the appellants pleaded guilty, the sentence was excessive in the circumstances.

I have now considered the grounds of appeal and submissions of counsel. The appellants are only aggrieved by the sentence which they complain is excessive Under **Section 13(3)** of the **Wildlife Act**, any person guilty to an offence under that **Section** is liable to a fine not exceeding Kshs.10,000/- or to imprisonment to a term not exceeding 1 year or both. I have taken into account the fact that the appellants pleaded guilty to the offence. They were treated as first offenders. In my view, non custodial sentence would have sufficed. For that reason, I find that the sentence was excessive in the circumstances. I quash the sentence of 1 month imprisonment. Instead the appellants are sentenced to pay a fine of Kshs.6,000/- in default 1 month imprisonment. It is so ordered.

**DATED and DELIVERED this 7<sup>th</sup> day of October 2011.**

**R.P.V. WENDOH**  
**JUDGE**

**PRESENT:**

**Mr. Cheche for the appellants.**

**Mr. Nyakundi for State.**

**Kennedy – Court Clerk.**