



**Ngaza alias Maridadi v Republic (Criminal Appeal E007 of 2022)
[2025] KEHC 132 (KLR) (17 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 132 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL APPEAL E007 OF 2022
M THANDE, J
JANUARY 17, 2025**

BETWEEN

MWAUCHI NGAZA ALIAS MARIDADI APPELLANT

AND

REPUBLIC RESPONDENT

*(An Appeal against the conviction and sentence of Hon. S. K. Ngii
SRM on 16.7.2020 in Mariakani Criminal Case No. 575 of 2019)*

JUDGMENT

1. The Appellant and one John Chisiwa Ngoma were charged and convicted of the offence of dealing in wildlife trophy of a specified endangered species without a permit or other lawful exemption contrary to Section 92(2) of the *Wildlife Conservation and Management Act*, 2013. The particulars of the offence are that on 30.7.19 at around 0550 hrs at Makobeni area, Rabai subcounty within Kilifi County, jointly with others not before court were found dealing in wildlife trophy namely 35 cut pieces of elephant tusks weighing 182.1 kilograms that being a trophy of a specified species under Sixth Schedule of the said Act with a street value of Kshs. 18,221,000/= without a permit from Director General Kenya Wildlife Service.
2. The Appellant has appealed against both the conviction and sentence raising 3 grounds namely that the trial Magistrate failed to that the case was poorly investigated which rendered the conviction unsafe; that the trial Magistrate failed to see that failure of the police informer to testify resulted in a miscarriage of justice; that the trial Magistrate erred in convicting the Appellant on the basis of evidence of prosecution witnesses who are all state officers and for rejecting his defence.
3. The Appeal is opposed by the Respondent vide submissions dated 17.4.23.
4. In his submissions, the Appellant did not submit on the grounds in his petition of appeal. He submitted that the time he spent in remand pending trial was not taken into account. Although the



issue was not raised in the petition of appeal, this Court is mindful that the Appellant is unrepresented and may not be conversant with the legal procedural intricacies. I am thus inclined to consider the issue of the period spent in remand, duly aware that Article 159(2)(d) of *the Constitution* enjoins the Court to administer justice without undue regard to procedural technicalities.

5. The lower court record shows that the Appellant was arrested on 30.7.19. He remained in custody until he was convicted and sentenced on 16.7.2020.

6. Section 333(2) of the Criminal Procedure Code provides as follows:

Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.

7. The proviso to Section 333(2) of the Criminal Procedure Code requires that court while sentencing, do take into account the period an accused person has spent in custody pending trial. In the case of *Bethwel Wilson Kibor v Republic* [2009] eKLR, the Court of Appeal had this to say about the said proviso:

The incident took place way back in 1999. The appellant was promptly arrested and taken to court. There were long adjournments due to transfers and/or changes of trial Judges resulting in long incarcerations of the appellant. By proviso to section 333(2) of Criminal Procedure Code where a person sentenced has been held in custody prior to such sentence, the sentence shall take account of the period spent in custody. Ombija, J. who sentenced the appellant did not specifically state that he had taken into account the 9 years period that the appellant had been in custody.

The appellant told us that as at 22nd September, 2009 he had been in custody for ten years and one month. We think that all these incidents ought to have been taken into account in assessing sentence.

8. Flowing from the above authority, it is clear that a trial court must specifically state that the period spent in custody by an accused person pending trial, has been taken into account when imposing sentence. As such, the imposed sentence must be is reduced proportionately by such period.

9. From the record, there is no mention by the trial court that the period that the Appellant had spent in custody pending trial, was taken into account when sentencing him. This is a serious omission on the part of the trial court, as it amounts to non-compliance with an express statutory provision.

10. In light of the foregoing, I do direct the sentence imposed upon the Appellant shall run from 30.7.19, the date of his arrest.

DATED SIGNED AND DELIVERED IN MALINDI THIS 17TH DAY OF JANUARY 2025

M. THANDE

JUDGE

