



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ndegwa v Republic (Criminal Appeal E015 of 2024)  
[2025] KEHC 9955 (KLR) (24 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 9955 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CRIMINAL APPEAL E015 OF 2024  
AN ONGERI, J  
FEBRUARY 24, 2025**

**BETWEEN**

**PHILIP KARANJA NDEGWA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the conviction and sentence of Hon. T. N. Sinkiyian (PM)  
in Voi CM Criminal Case No. E1319 of 2021 delivered on 6th December 2023)*

**JUDGMENT**

1. The Appellant was charged alongside others with the offence of dealing with carcasses of wildlife species contrary to Section 98(1) of the *Wildlife Conservation & Management Act* (WCMA).
2. The Appellant pleaded not guilty to the charge and the prosecution called two witnesses whose evidence was that the Appellant was found with 10 dik dik heads and 10 carcasses weighing 30kilograms. The Appellant and his co-accused did not have a permit.
3. The Appellant did not give any evidence.
4. The trial court sentenced the Appellant to four (4) years imprisonment.
5. The Appellant has appealed against conviction and sentence on the following grounds:-
  - i. The learned trial Magistrate erred in both law and fact when she misdirected herself.
  - ii. The learned trial Magistrate erred in both law and facts when she shifted the burden of proof from prosecution to the Appellant.
  - iii. The learned Magistrate erred in law when she considered the evidence adduced by prosecution full of massive contradictions.



- iv. The learned trial Magistrate erred in law in convicting the Appellant on poor investigation adduced by prosecution.
  - v. That the learned trial court Magistrate erred in law fact by convicting him the Appellant to 4 years imprisonment without considering that the sentence meted on him was harsh and excessive.
  - vi. That the learned trial court Magistrate erred in law fact by convicting him the Appellant to 4 years imprisonment without considering his reasonable defense.
6. The parties filed submissions as follows:- the appellant submitted that the prosecution did not prove their case to the required standard. The appellant contended that the case was marred with contradictions. He indicated that the crime scene as far as the investigating officer was concerned was mgeno ranch which is over 50 Km away from Taita Ranch. The appellant also argued that the inventory was not properly signed as required by law.
  7. The prosecution alternatively submitted that PW1 a ranger attached at Taita ranches testified that on 11/9/2021 he was informed that there were torches spotted in the ranch. Their investigation led them to a house where they found three men. The three were the appellant, Daniel, Julo and Ndeka Mzungu.
  8. They searched the room and found a black bag, brown ngunia, shopping bag, 2 torches, 2 sirens, 2 slashers, 2 knives. In the shopping bag they found 10 Dik Dik heads and carcasses in a black bag. When they requested a permit the three had none. This was corroborated by PW2 who was a ranger at Taita ranches
  9. It was the prosecutions argument that the appellant and his accomplices were in actual possession of the 10 Dik Dik heads and carcasses and consequently proved its case beyond reasonable doubt.
  10. This being a first appeal, the duty of the first appellate court are as follows:- In Kisumu Criminal Appeal 28 of 2009 *David Njuguna Wairimu v Republic* [2010] eKLR where the court of appeal stated:
 

“The duty of the first appellate court is to analyse and re-evaluate the evidence which was before the trial court and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court. There are instances where the first appellate court may, depending on the facts and circumstances of the case, come to the same conclusions as those of the lower court. It may rehash those conclusions. We do not think there is anything objectionable in doing so, provided it is clear that the court has considered the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decisions.”
  11. The issues for determination of this appeal are as follows:-
    - i. Whether the prosecution proved the guilty the Appellant to the required standard.
    - ii. Whether the sentence is lawful.
  12. On the issue of prove of the guilt, there is evidence that the Appellant was arrested with the carcasses by PW1 and PW2.
  13. There is evidence that following information received by PW1, investigations were conducted that led to a room where the appellant was arrested.



14. PW1 searched the room and found a black bag, brown ngunia, shopping bag, 2 torches, 2 sirens, 2 slashers, 2 knives. In the shopping bag they found 10 Dik Dik heads and carcasses in a black bag. When they requested a permit the three had none.
15. This was corroborated by PW2 who was a ranger at Taita ranches.
16. The evidence is watertight and leaves no room for speculation and I find that the conviction is secure.
17. On the issue as to whether the sentence is excessive, I find that the trial court was right in refusing to place the appellant on probation as the same would encourage poaching.
18. However, the appellant is a first offender and the Trial court ought to have been considered in sentencing him.
19. The sentence of 4 years is excessive in the circumstances and I reduce it to 2 years imprisonment.
20. The period the appellant was in custody to be taken in consideration in computation of the remand period.

**DATED, SIGNED AND DELIVERED THIS 24<sup>TH</sup> DAY OF FEBRUARY 2025 VIRTUALLY AND IN OPEN COURT AT VOL.**

**ASENATH ONGERI**

**JUDGE.**

In the presence of:-

Prosecutor; Mr. Ngigi

Court Assistant: Maina

The Appellant present in voi Court

