



REPUBLIC OF KENYA



KENYA LAW
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**Kipngorola v ODPP (Criminal Appeal E007 of 2024)
[2025] KEHC 4999 (KLR) (24 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4999 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL APPEAL E007 OF 2024
RB NGETICH, J
APRIL 24, 2025**

BETWEEN

NICODAMUS LANGAT KIPNGOROLA APPELLANT

AND

ODPP RESPONDENT

*(Being an appeal against conviction and sentencing from the decision of
the Honourable Principal Magistrate Carolyne T. Ateya in Criminal
Case No. E404 of 2023 delivered on 15.05.2024 at Kabarnet Court)*

JUDGMENT

1. The Appellant Nicodamus Langat Kipngorola/Appellant was charged with two counts of offences. Count 1 is the offence of dealing in live wildlife species of a specified critically endangered species without a permit or any other lawful exemption contrary to section 92(3) of the [Wildlife Conservation and Management Act](#). The particulars of the charge were that the Appellant on the 14th July 2023 at Kabarnet Township within Baringo County was found dealing in a live wildlife species of a critically endangered species namely one live pangolin measuring 60cm long without a permit from the Director Kenya Wildlife Service.
2. Count II is the charge of being in possession of live wildlife species of a specified critically endangered species without a permit or other lawful exemption contrary to section 92(4) of the [Wildlife Conservation and Management Act](#) 2013. The particulars of the charge were that the Appellant on the 14th July 2023 at Kabarnet Township within Baringo County was found in possession of a live wildlife species of a critically endangered species namely one live pangolin measuring 60cm long without a permit from the Director Kenya Wildlife Service.
3. The accused denied the two charges and to prove the charge the prosecution called 4 witnesses. By judgement delivered by the Trial court on the 30th April,2024, the court acquitted the Appellant on



the 1st Count but found him guilty and convicted him of count 2 and was sentenced to serve 5 years imprisonment in default a fine of Kshs 3,000,000/=.

4. Dissatisfied with the judgement of the trial court, the Appellant filed a Petition of Appeal on the following grounds:-
 - i. The Honourable Magistrate erred in law and fact in sentencing the Appellant to serve 5 years imprisonment and or pay a fine of Kshs 3,000,000.00, an extremely harsh sentence in comparison to the gravity of the offence committed and contrary to the evidence tendered by the appellants witnesses.
 - ii. The Honourable Magistrate erred in law and in fact by meting sentence which is extremely harsh without considering the appellant's evidence, the manner in which the offence was committed and contrary to the sentencing guidelines.
5. The Appellant prays: -
 - a. That the appeal be allowed.
 - b. That the conviction and sentence be set aside.
 - c. That the Honourable court be pleased to issue any other orders to satisfy the end of justice.
6. On 3rd February 2025, the appellant informed the court that he was not appealing against conviction but was only appealing against sentence and of the 5-year jail term, he was remaining with 2 years 8 months to complete the sentence. He prayed to be allowed to serve probation sentence for the remaining period of imprisonment.

Analysis And Determination.

7. The appellant having abandoned appeal on conviction, what is left for court's determination is whether this court should revise the remaining period of imprisonment imposed against the appellant. The enabling law governing revision is Article 165(6) and (7) of *the Constitution* and section 362 as read together with section 364 of the *Criminal Procedure Code*. Sentencing is the discretion of the trial court but such discretion must be exercised judiciously and not capriciously. In the case of Shadrack Kipchoge Kogo v Republic Criminal Appeal No. 253 of 2003(Eldoret), the Court of Appeal stated as follows;

“Sentence is essentially an exercise of the trial court and for this court to interfere, it must be shown that in passing the sentence, the court took into account an irrelevant factor or that a wrong principle was applied or short of those the sentence was so harsh and excessive that an error in principle must be inferred”
8. Similarly, in the case of Wanjema v Republic [1971] E.A. 493 the court stated as follows: -

“An appellate court should not interfere with the discretion which a trial court has exercised as to the sentence unless it is evident that it overlooked some material factors, took into consideration some immaterial fact, acted on wrong principle or the sentence is manifestly excessive in the circumstances of the case.”
9. I called for social inquiry report to assist this court determine whether the appellant should be allowed to serve the remaining period of imprisonment under probation. From the report, the appellant has



learnt carpentry grade III and is currently undertaking carpentry grade II. He pleads for noncustodial sentence so that he may take care of his 5 children and assist in taking care of his late sister's 3 children.

10. The community and local administration stated that the appellant was of good conduct prior to his arrest. The local administration is not opposed to accused being released on non-custodial sentence. I also take note of the fact that the appellant took imprisonment positively and studied a skill which will help him earn a living and be useful in the community. From the 5-year jail term, the appellant is now remaining with 2 years 7 months to serve. From the social inquiry report, the appellant is suitable for non-custodial sentence and I am inclined to revise the remaining period of imprisonment to non-custodial sentence.

11. Final Orders: -

1. Appeal on conviction is hereby marked as abandoned
2. The sentence is revised to probation sentence for the remaining period of sentence.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET HIGH THIS 24TH DAY OF APRIL 2025.

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RACHEL NGETICH

JUDGE

In the presence of:

- Momanyi – Court Assistant.
- Ms. Bartilol for State.
- Mr. Chepkilot H/B for Kiptoo for accused.
- Appellant present.

