



**Samuel & 6 others v Republic (Criminal Appeal E012 of 2025)
[2025] KEHC 6133 (KLR) (16 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6133 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL APPEAL E012 OF 2025
AN ONGERI, J
MAY 16, 2025**

BETWEEN

**KASHUMA MALIPE SAMUEL 1ST APPELLANT
MOHAMED YUSUF GURE 2ND APPELLANT
MULE LESITI 3RD APPELLANT
ISMAEL SHAFFI NURI 4TH APPELLANT
ABDULLAHI MOHAMED ALI 5TH APPELLANT
LOKA KIMAI PARALETI 6TH APPELLANT
OSMAN HASSAN DAKANE 7TH APPELLANT**

AND

REPUBLIC RESPONDENT

*(Being an appeal from the sentence of Hon. D. Wangeci (SPM) in
Wundanyi Criminal Case No. E080 of 2025 delivered on 4th March 2025)*

JUDGMENT

1. The Appellants were arraigned before the Wundanyi SPM Court charged with the offence of entering into a Protected Area contrary to Section 102(1)(h) of the [Wildlife Conservation and Management Act](#) (WCMA) and they pleaded guilty to the charge and were sentenced to pay a fine of Kshs. 100,000/= and in default to serve one (1) year imprisonment each.
2. The Appellants have appealed to this court against sentence on the following grounds:-
 - i. That the learned trial Magistrate erred in law and fact for failing to ensure that the proceedings were conducted in a language the Appellant could understand.



- ii. That the learned trial Magistrate erred in law and fact for entering a plea of guilty while the Appellant did not understand the language of proceedings.
 - iii. That the learned trial Magistrate erred in law and fact by failing to appreciate the discrepancy between the charges and the particulars of the offence.
 - iv. That the learned trial Magistrate erred in law and fact for failing to apply the sentencing policy in the matter.
 - v. That the learned trial Magistrate erred in law and in fact by meting an excessive sentence against the Appellant.
3. The facts of the case were as follows:-
- On 2nd March 2025 KWS officers led by ranger Mwangi went on patrol at Libile area within Tsavo West National Park at around 1400hours. They saw 7 men from a distance. They laid an ambush and arrested all the 7 after 45 minutes. They introduced themselves as KWS officer and requested the men to introduce themselves which they did and were asked to produce a permit allowing them in the area. They said that they did not have a permit. Arrested at GPS coordinator 37M, 6433639 UTM 9561054 taken to Maktau KWS base for further interrogation and booked at Mwatate Police Station and charge in court accordingly. I produce a map showing area of arrest as PEX.1.
4. The parties filed written submissions as follows;
 5. The Appellants submitted that they have filed this appeal challenging their conviction and sentence on several grounds.
 6. They argued, first, that they did not understand the language of the court proceedings, which violated their constitutional right to a fair trial under Article 50(2)(b), (j), and (m) of *the Constitution*. Despite the record indicating the presence of Somali and Maasai translators, the translation process was flawed.
 7. They stated that the translators were sourced externally, raising doubts about their competence, and they were not formally sworn in.
 8. Additionally, discrepancies in the record—such as conflicting times (1945 hours vs. 1400 hours) and inconsistent GPS coordinates—further undermine the reliability of the interpretation.
 9. The Appellants rely on judicial precedents, including *Kenga Hisa v Republic* and *Hacioglu v Romania*, which emphasize the necessity of accurate interpretation for a fair trial.
 10. Secondly, the Appellants contend that the trial magistrate failed to address glaring discrepancies between the charges and the facts presented. The inconsistencies in the time and location of the alleged offense should have prompted the court to either amend the charges or enter a plea of not guilty.
 11. Citing *Joseph Ndungu Kagiri v Republic*, they argue that the court has a duty to uphold constitutional safeguards and ensure a fair, transparent trial.
 12. Lastly, the Appellants challenge the severity of their sentence, arguing that the magistrate failed to consider mitigating factors. As first-time offenders with no prior records, they submit that a non-custodial sentence would have been more appropriate.
 13. They highlight the absence of clear park boundaries and the lack of evidence showing any threat to the Tsavo West National Park. Relying on *Wilson Kipchirchir Koskei v Republic*, they assert that judicial discretion should prevent unjust outcomes, particularly where statutory penalties are excessively harsh.



14. They urge the court to quash the conviction and set aside the sentence, as it was imposed without proper regard for fairness and proportionality.
15. The respondent opposed the appeal and submitted that the trial court's conviction and sentencing of the appellants were just and properly conducted in accordance with legal procedures.
16. Further, that the appellants were charged under Section 102(2A) of the *Wildlife Conservation and Management Act* for entering a protected area with livestock without authorization.
17. That they pleaded guilty after the charge and its facts were explained to them in their preferred languages (Maasai and Somali) with the assistance of court-appointed interpreters.
18. The respondent cites the cases of *Adan v Republic* (1973) and *Alexander Lukoye Malika vs. Republic* (2015) to emphasize that the plea was properly recorded, the facts admitted, and the conviction lawfully entered.
19. The respondent also said that the appellants, being first-time offenders, were given a chance to mitigate before the court imposed the prescribed sentence. The respondent asserts that due process was followed and urges the appellate court to uphold the trial court's decision.
20. The Appellants having pleaded to the charge have no right to appeal except only on sentence.
21. The issues for determination in this appeal are as follows:-
 - i. Whether the plea was unequivocal.
 - ii. Whether the Appellants understood the language of the court.
 - iii. Whether the sentence is excessive.
22. In determining this appeal, the court must carefully consider whether the plea entered by the Appellants was unequivocal, whether they understood the language of the court proceedings, and whether the sentence imposed was excessive under Kenyan law.
23. On the first issue, the unequivocal nature of the plea is paramount. A plea of guilty must be clear, unambiguous, and made with full comprehension of the charge and its consequences. The record indicates that the Appellants pleaded guilty after the charge and facts were read to them with the assistance of interpreters in Somali and Maasai. However, the Appellants have raised credible concerns regarding the competence and formal swearing-in of the interpreters, as well as discrepancies in the record, such as conflicting times and GPS coordinates.
24. The case of *Adan v Republic* (1973) EA 445 establishes that a plea must be free from any ambiguity, and if there is any doubt as to whether the accused fully understood the charge, the benefit of such doubt must be given to the accused.
25. Similarly, in the case of *Kenga Hisa v Republic*, the court emphasized that the right to interpretation is a fundamental aspect of a fair trial under Article 50(2)(m) of *the Constitution*.
26. Given the irregularities in the interpretation process and the inconsistencies in the record, there is reasonable doubt as to whether the Appellants' plea was truly unequivocal.
27. The second issue pertains to whether the Appellants understood the language of the court. Article 50(2)(b) of *the Constitution* guarantees an accused person the right to have the proceedings conducted in a language they understand.



28. The Appellants argue that the interpreters were not formally sworn in and that their competence was questionable, which undermines the fairness of the trial.
29. In the case of *Hacioglu v Romania* (cited by the Appellants) the court reinforces the principle that interpretation must be effective and accurate to ensure a fair trial. While the respondent contends that the proceedings were properly interpreted, the absence of a sworn affidavit from the interpreters or any record of their qualifications casts doubt on the reliability of the interpretation.
30. In the case of *Joseph Ndungu Kagiri v Republic*, the court held that any failure to adhere to constitutional safeguards renders a trial unfair. The discrepancies in the record, coupled with the lack of formal certification of the interpreters, suggest that the Appellants' right to a fair trial may have been compromised.
31. On the third issue, the court must assess whether the sentence imposed was excessive. The Appellants were sentenced to a fine of Kshs. 100,000 or one year imprisonment for entering a protected area without authorization under Section 102(1)(h) of the *Wildlife Conservation and Management Act*.
32. While the respondent argues that the sentence was lawful and within the magistrate's discretion, the Appellants contend that the magistrate failed to consider mitigating factors, such as their status as first-time offenders and the absence of any demonstrated harm to the protected area.
33. In the case of *Wilson Kipchirchir Koskei v Republic*, the court emphasized that judicial discretion in sentencing must be exercised judiciously and proportionately, considering all the circumstances of the case.
34. The sentencing policy guidelines also advocate for non-custodial sentences where appropriate, particularly for first-time offenders.
35. Given that the Appellants were not accused of any violent or destructive acts, the sentence appears disproportionately harsh.
36. In conclusion, the appeal succeeds on all three grounds. The plea was rendered equivocal due to the irregularities in interpretation and inconsistencies in the record, violating the Appellants' right to a fair trial under Article 50 of *the Constitution*.
37. The sentence imposed was excessive and failed to account for mitigating factors.
38. Consequently, the conviction is quashed, and the sentence set aside.
39. The Appellants shall be released forthwith unless otherwise lawfully held for any other reason.

DATED, SIGNED AND DELIVERED THIS 16TH DAY OF MAY, 2025 ONLINE VIA MT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Prosecutor: Mr. Ngigi

Court Assistants: Maina/Millicent

