Echukule v Republic (Criminal Appeal E004 of 2025)
[2025] KEHC 11847 (KLR) (24 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11847 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MARSABIT

CRIMINAL APPEAL E004 OF 2025

FR OLEL, J

JULY 24, 2025

BETWEEN

JOHN EWOT ECHUKULE ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an appeal arising from the conviction and Sentence of Hon C Wekesa (SPM), in Marsabit (loyangalani) Principal Magistrate Court Criminal Case No E001 of 2025, delivered on 15th January 2024)

JUDGMENT

A. Introduction

1. The Appellant herein, John Ewot Echukule, was on 13th January 2025, charged with the offence of Entering into a protected area without a permit contrary to section 102 (1),(a) of the *Wildlife Conservation and Management Act*, 2013, Cap 376, Laws of Kenya. The particulars were that on the 10th day of January 2025 at around 1630 hrs, at Barasuma area Kambi in Sibiloi National Park with Marsabit county GPS coordinate's 37N0197202 UTM 0412754, he was found inside the marine protected Area of Sibiloi National Park with another not before court without a permit or other lawful exception granted under this Act.

2. On Count II, the Appellant was charged with the offence of Conveying a trap into a protected area without a permit contrary to section 102 (1), (f) of the *Wildlife Conservation and Management Act*, 2013, Cap 376 Laws of Kenya. The particulars of the offence were that on the 10th day of January 2005 at around 1630 hrs, at Barasuma in Sibiloi National Park with Marsabit county GPS coordinate's 37N0197202 UTM 0412754, he conveyed fishing traps namely fishing nets inside the marine protected area of Sibiloi National park with others not present in court without a permit or other lawful exemption granted under this Act.

3. On Count III, the Appellant was charged with the offence of undertaking extractive activities of illegal fishing without a permit contrary to section 102 (1), (g) of the *Wildlife Conservation and Management Act*, 2013, Cap 376 Laws of Kenya. The particulars of the offence were that on the 10th day of January 2025 at around 1630 hrs, at Barasuma in Sibiloi National Park with Marsabit county GPS coordinate's 37N0197202 UTM 0412754, he was found undertaking illegal fishing activities with another not before court using fishing nets of approximately 200M long having already extracted fresh fish of about 20 kilograms without a permit or other lawful exemption granted under the Act.

4. On count IV the Appellant was charged with being in possession of Ammunition without holding a firearms certificate contrary to Section 4(1),(2)(a) as read with subsection 3(a) of the *Firearms Act*. The particulars were that on the 10th day of January 2025 at around 1630hrs, at Barasuma area in Sibiloi National park within Marsabit county GPS coordinates' 37N 0197202 UTM 0412754 without reasonable excuse he was found in possession of two rounds of ammunition namely one round of 7.62 x 51MM and one round of ammunition of 7.62 x 39MM inside the protected area of Sibiloi National park in circumstances which raised reasonable presumption that the said ammunition were intended to be used in a manner prejudicial to public order, without a firearm certificate.

5. The appellant took plea on 13th January 2025, and after the charges were read out to him, he pleaded guilty on Counts I, II, III, and Count IV by stating that "It is true". The court warned the Appellant of the seriousness of the offences he faced, and despite the warning issued, the Appellant maintained his plea of guilt. After which, the trial court did enter a plea of guilty, and the prosecution proceeded to state the facts of the case. when asked again if the facts were correct, the appellant again confirmed that indeed the said facts were correct. He stated that, "The facts are correct".

6. The court thereafter convicted the appellant on his own plea of guilt, and after mitigation, sentenced him to pay a fine of Kshs.200,000/=, and in default, he was to serve a term of two (2) years on counts I, II, & III. On count IV, he was sentenced to serve an imprisonment term of seven (7) years. The sentences were to run concurrently.

7. The Appellants, being dissatisfied with the said conviction and sentence passed did filed this petition of Appeal and raised the following grounds of Appeal;

    a. The learned trial Magistrate never accorded us a fair hearing.

    b. The learned trial Magistrate erred in matters of law and facts by failing to note that the sentence passed was harsh, excessive, and contrary to the law.

    c. The learned trial Magistrate failed to consider the Appellant's sentencing, yet the Appellant never wasted the court's precious time.

    d. The learned trial Magistrate failed to consider my mitigation.

8. The Appellant therefore prayed that his Appeal be allowed, his conviction and sentence be set aside, and he be set free.

B. Parties Submissions

9. The Appellant submitted that when he took a plea, he never understood the particulars of the charge as well as the facts read out to him, because he was unwell, having been assaulted by the arresting police officers. He's plea of guilt was therefore not unequivocal and had resulted in a travesty of justice. Secondly, the Appellant posited that the learned trial magistrate erred when she failed to consider his mitigation and the fact that he was a first-time offender, thus sentencing him to serve a harsh sentence.

10. The state/prosecution partially opposed this Appeal and noted that on counts I, II & III, the Appellant was properly convicted on his own plea of guilt. He was warned by the trial court of the consequences of pleading guilty and the seriousness of the offence faced, but he still maintained his plea of guilty. After the facts were read to him, the Appellant once again confirmed and maintained his plea. His conviction under the law was therefore proper, and thus urged this court to sustain the same.

11. Be that as it may, the state/prosecutor did concede that the sentence passed could be reconsidered as the Appellant had pleaded guilty and saved precious judicial time from being wasted. Further, they also conceded that the Appellants' conviction under count IV was not safe, as there was no ballistic report filed to confirm if indeed the two rounds of ammunition recovered were "ammunition" as defined under the *Firearms Act*.

C. Determination

12. This being the first appeal, this court is expected to re-evaluate the evidence tendered before the trial court and to come up to its own logical conclusion by taking into account the fact that it did not have the advantage of seeing and hearing the witnesses and their evidence, and/or see their demeanor. This court is guided by various established citations, including *Okeno v. Republic* (1927) EA 32 & *Pandya v. Republic* (1975) EA 366 & *Peter's v Sunday Post*(1958) EA 424.

13. The appellant in his petition of appeal challenges both his conviction and sentence. Section 348 of the *Criminal Procedure Code* expressly bars an appeal from subordinate court where an accused person was convicted upon his plea of guilt, except to the extent that he challenges the legality of the sentence. The said section provides that;

> " No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent and legality of the sentence."

14. It therefore follows that the appellant is, by virtue of section 348 of the *Criminal Procedure Code*, barred from challenging his conviction, unless he challenges the extent or legality of the sentence imposed on him by the trial court. Be that as it may, it has been held severally by courts that this bar only operates where the plea is unequivocal. Accordingly, the court is not barred from inquiring as to whether a prima facie plea of guilty was unequivocal or not. Similarly, it does not bar the court from inquiring as to whether the facts as read out to the accused constituted any offence. See *Anthony Muthoga Munene v Republic* {2022} eKLR and *Hando s/o Akunaay v Rep* (1951) EACA 307 where it was held that:

> " Before convicting on any such plea, it is desirable not only that every Constituent of the charge should be explained to the accused, but that he should be required to admit or deny every such constituent.
>
> Where an accused person who has been called upon to plead under section 207 of the *criminal procedure code* in the subordinate admits the charge the proviso to subsection (2) requires the prosecution to outline the facts upon which the charge is founded. The truth or otherwise of the charge is a combination of three things, the charge, the particulars of the offence contained in the charge-sheet or information as the case maybe, as well as the facts outlined where the accused pleads guilty. The facts therefore are as important part of the plea as the charge itself. The nature and element of the offence in totality must be understood by the accused and the trial court must be satisfied about this accepting them as true."

15. Before the trial court, the charge against the accused was read out to him in a language he understood (Kiswahili/Turkana), and he pleaded guilty to the same by stating that, "It is true." At this point, the court did warn the Appellant of the seriousness of the offence faced and the consequences of pleading guilty, but the Appellant maintained that the charges leveled against him were true. The trial court did enter a plea of guilt, and the prosecution then went ahead and read out the summarized facts of the case and produced the Exhibit they relied on to prove their case. The accused, at this stage, when asked if the facts were corrected, stated that " The facts are true."

16. The question before this court for determination is simple? Was the plea equivocal or unequivocal, given the circumstances and facts of this appeal? In the opinion of this court, it is clear that the appellant fully understood and agreed with the charges and particulars of the offence as read out to him, and that is why he pleaded guilty on each count, which contained specific offences and had elaborate particulars. After the plea of guilty was entered, the prosecution went ahead and explained the facts to the appellant, and he admitted they were true. The provisions of section 207 of the *Criminal Procedure Code* was thus complied with, and prima facie, the plea of guilty by the appellant was unequivocal.

17. The trial court, after considering the Appellants' mitigation, opted to sentence the Appellant to pay a fine of Kshs 200,000/= or, in default, to serve a sentence of two (2) years. On the face of it, the said sentence is lawful as that is what it provides for under the *Wildlife Conservation and Management Act*, 2023.

18. Be that as it may, Sentencing is a discretion of the court. But the court should look at the facts and the circumstances of the case in its entirety so as to arrive at an appropriate sentence. The Court of Appeal in *Thomas Mwambu Wenyi v Republic* (2017) eKLR cited the decision of the Supreme Court of India in *Alister Anthony Pereira v State of Maharashtra* at paragraphs 70-71 where the court held the following on sentencing:

> " Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence."

29. The Court of Appeal in the case of *Benard Kimani Gacheru v Republic* (2002) eKLR also stated that ;

> " It is now settled law, following several authorities by this court and by the High Court that sentence is a matter which rests in the discretion of the trial court. Similarly, sentencing depends on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless the sentence is manifestly high/excessive in the circumstances of the case or that the trial court overlooked some mutual factors or took into account some wrong material or cited upon a wrong principle. Even if the Appellate court feels that the sentence is heavy and the Appellate court might itself not have passed that sentence, these alone are

not sufficient grounds for interfering with the decision of the trial court on sentence unless any of the matters stated i.e., shown to exist."

29. The Appellant has a legitimate expectation that during trial he will be subject to equal treatment before the law and further will be accorded a fair hearing, which includes the right to have all relevant provisions of the law applied favorably where the circumstances allow. See *Ahmad Abolfathi Mohammed & Another v Republic* (2018) eKLR & *Bethwel Wilson Kibor v Republic* (2009) eKLR

30. The "*Muruatetu decisional law*" interposed to Article 50(2)(p) of the *Constitution* arguably, changed the law on mandatory punishments and provided room for discretion of court to impose appropriate sentence- which may be less severe than the mandatory sentence provided for depending on the facts of the case. I should think, therefore, that any person who suffered a mandatory sentence may invoke provisions of Article 50(2)(p) of the *Constitution* and seek a less severe sentence, as such would remedy the injustice and the violation of the right to fair trial caused by the imposition of a mandatory sentence.

31. The Judiciary sentencing policy guideline also provides that the court, before passing the sentence, must consider the gravity of the offence, aggravating and mitigating circumstances of the offence, and also the criminal history of the accused persons.

32. Having considered the above parameters, the current jurisprudence on sentencing, and the state having concede this appeal on this aspect, I do find that the trial magistrate erred in imposing the maximum penalty provided for under Section 102 (1), (a) of the *Wildlife Conservation and Management Act*, 2013. Under the circumstances of this case, the same was harsh and constitutes an error, which invites this court's discretion to correct.

D. Disposition.

33. This Appeal is therefore partially successful, and the orders that commend themselves are that;

    a. The Appellants' appeal against his conviction on counts I, II, & III fails, and the said conviction is upheld.

    b. The Appellants' appeal against his conviction on count IV succeeds, and the said conviction and sentence is hereby set aside.

    c. The sentence imposed by the trial Magistrate Hon Christin Wekesa (SPM) issued in Marsabit PMCR No E001 of 2025 as against the Appellant on counts I, II, and III dated 14th January 2025, is hereby set aside and the Appellant is resentenced to pay a fine of Kshs.50,000/= and/ or in default to serve a sentence of one-year imprisonment.

    d. The sentence will start to run from 10th January 2025, when he was arrested, pursuant to provisions of Section 333(2) of the *Criminal Procedure Code*.

    e. Right of Appeal 14 days.

34. It is so ordered.

JUDGMENT READ, SIGNED AND DELIVERED IN OPEN COURT AT MARSABIT THIS 24TH DAY OF JULY, 2025.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 24TH DAY OF JULY, 2025.

In the presence of;

..... Appellant

.....For O.D.P.P

.....Court Assistant