



REPUBLIC OF KENYA



KENYA LAW
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**Gedio v Republic (Criminal Appeal E065 of 2023)
[2025] KEHC 10194 (KLR) (4 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10194 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL APPEAL E065 OF 2023**

TM MATHEKA, J

JULY 4, 2025

BETWEEN

MESHACK NYAMAI GEDIO APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The appellant was charged in Makindu MCCRC E723/2023 together with Jonathan Munywoki Masila with the following offences;

Dealing in wildlife trophy of critically endangered species without a permit contrary to section 92(2) of the *wildlife conservation and management Act* 2013 , where it was alleged that on 17th August 2023 they were found dealing in critically endangered wildlife species namely 9 pieces of East African Sandal wood without authority from the director general of the Kenya Wildlife Service, and Residing in a protected area without a permit contrary to section 102(1) (a) of the *Wildlife Conservation and Management Act* 2013 where it was alleged that on the same date at around 9:00am at Sinai area of Chyulu Hills National Park within Kibwezi sub County in Makueni County they were found having resided in the said Park without the authority of director general of the Kenya Wildlife Service, at GPS coordinates 37M 0380387 UTM9705447

2. He appeared in court on 18/8/2023.
3. The charges were read to him and he pleaded guilty to each count by saying – *Ni ukweli*.
4. The facts were read to him and he pleaded

“Maelezo si ya ukweli”



5. The trial court entered a plea of not guilty.
6. On 7/9/2023 the accused changed his mind and pleaded guilty.
7. The facts were read on 14/12/2023 and he pleaded to the facts by stating

“Maelezo ni ya ukweli”

8. He was convicted on his own plea of guilty. In mitigation he said;

“Naomba msamaha sina wazazi na sitarudia. Naomba msamaha bibi yangu ako na mimba, niko na watoto and sitarudia.”

9. The court sentenced his thus:-

On Each accused is fined Kshs. 200,000 in default 12 months in jail.

Count
On Each accused is sentence to 2 years in jail.

I:
Right of appeal, 14 days.

II:

10. The appellant filed the appeal on the following grounds: -

1. That I pleaded guilty to the charges.
2. That, the learned trial magistrate grossly erred in law and facts by failing to draw an inference that my plea of guilty was as a result of coercion in which the arresting officer convinced me that the charges are not serious and will be set free for I am a first offender and since am a layman in terms of law, I strongly believed that the trial will consider my situation only to learn later it was an offence.

“Am remorseful and apologetic before this honourable High Court for I did not know the consequences of the offence I was charged with.

3. That, the trial court erred in law and facts by failing to consider the compelling defence of the appellant without proper evaluation.
4. That, I am remorseful and am making this appeal for leniency, having learned a lesson the hard way.
5. That, I left my (4) four little children aged 8 yrs, 4yrs, 2 yrs and 1 yr, who were dependent on me for up keep and are now suffering since I was imprisoned and am worried about their welfare. My incarceration is a threat to them since they are all under my sister who also takes care of our father who needs special care since he is aged, thus becoming a burden to my sister.
6. That, I plead with this honourable court to pardon me or grant me a non-custodial sentence for the remaining period of my sentence so that I can take care of my children who are at a tender age.
7. That, having learnt a lesson the hard way in prison custody, I have reformed and promise to lead a crime free life upon my re-integration.

11. The appeal proceeded by way of written submissions.

12. The appellant abandoned the appeal against the conviction and raised grounds on the sentence thus;



1. That the sentence was harsh and excessive being first time offender.
 2. That he be given minimum mandatory sentence as provided by law.
 3. That, he was a bread winner and have school going children who depended on him
 4. That, he be accorded a non-custodial sentence based on mitigations ground.
 5. That, he is remorseful and rehabilitated.
13. He argued that the sentence was harsh and excessive by submitting that;
- “My lady to start with allow me to state categorically that the accused person was charged in defective charge sheet because in Wildlife Conservation and Management Act 2013, there is no Section 92(2) instead the section is dealing in Wildlife Trophy of Critically endangered species without a permit contrary to Section 92 of the Wildlife Conservation and Management Act 2013.”
14. He urged the court to find that he was rehabilitated and remorseful.
 15. In addition he submits that the minimum mandatory sentence is frowned upon as it ties the arms of the court and takes away its discretion.
 16. He submitted that he was a 1st offender and that was not considered.
 17. The respondent submitted that the custodial sentence was fair, legal and the same took into account the provisions of the law – and the SPG’s. The respondent relies on section 92(2), section 102(1) (a) of the Wildlife Conservation and Management Act, and Jackson Lochibail v R [2022] eKLR.
 18. It is submitted that the trial court did not err.
 19. I have carefully considered the submissions on by each of the parties.
 20. The issue is whether the appeal has merit.
 21. The accused pleaded guilty to the charges against him. I have perused the record, and I can see that the plea was unequivocal. The appellant had pleaded not guilty to the fact in the first place he cannot therefore say that he was forced to plead guilty as alleged.
 22. On the sentence: Section 92(2) of the Act exists and provides that upon conviction a person is liable to a term of not less than 7 years. The court sentenced him to fine of Kshs. 200,000 in default 12 months imprisonment.
 23. Section 102(1) (a) provides that the person upon conviction is liable to a fine of not less than Kshs. 200,000 or to imprisonment of not less than 2 years imprisonment.
 24. From the legal provisions it is clear that the sentences cannot be said to be outside what the law provides - and the court was in my view lenient in view of the provisions of the law . In fact the state has submitted that the sentence ought to be raised to 7 years - as provided for by the law.
 25. It is noteworthy that the appellant was not given notice of this, so that he would decide whether or not to appeal against the sentence of the lower court- it was necessary that the prosecution gave notice that they would be seeking the enhancement of the sentence.
 26. I would find that the sentences as meted were not harsh or excessive but within the discretion of the trial court.



27. In the circumstances I find no reason to interfere with the sentence.
28. The only thing I find is that the trial court did not take into consideration the period that the appellant had spent in custody prior to the sentence.
29. Hence the appeal is dismissed. The Sentence is upheld but to run from 18/8/2023.

DATED SIGNED AND DELIVERED VIRTUALLY ON 4TH JULY 2025

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MUMBUA T. MATHEKA

JUDGE

CA Chrispol Appellant

Mr. Kazungu for the State

