



REPUBLIC OF KENYA



**KENYA LAW**  
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**Myala & another v Republic (Criminal Appeal E054 of 2024)  
[2025] KEHC 9480 (KLR) (2 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9480 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CRIMINAL APPEAL E054 OF 2024  
AN ONGERI, J  
JULY 2, 2025**

**BETWEEN**

**SALIM CHIMBONJA MYALA ..... 1<sup>ST</sup> APPELLANT**

**CHIVORO NDAMAU CHIVORO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the judgment of Hon. C. K. Kitbinji (PM) in  
Voi CMCR Case No. E812 of 2022 delivered on 20th December 2024)*

**JUDGMENT**

1. The two Appellants Salim Chibonja Myala and Chivoro Ndamau Chivoro were charged with the offence of dealing in wildlife trophy of an endangered species contrary to Section 92(2) of the [Wildlife Conservation and Management Act](#) (WCMA) 2013.
2. The 1<sup>st</sup> Appellant had a second charge of assault in resisting arrest contrary to Section 253(a) of the [Penal Code](#).
3. The prosecution evidence in summary from that PW1 No. 8862 Lobula Dominic who is a KWS Ranger from Dakota platoon Tsavo East got a call on 13<sup>th</sup> December 2022 at 8:30p.m from Sergeant Ali that there were people at Buguta Area ready to sell elephant tusks.
4. Sergeant Ali posed as a buyer and he went with PW1 in the company of Rangers Japhet Ngolo and Dickson Dido.
5. The five Rangers went in a Probox vehicle that Sergeant Ali had with him at 11:00p.m.
6. When they reached near Buguta at 2:00a.m, they found someone on the road with a motor cycle who gave a signal as agreed with Sergeant Ali and Salim.



7. PW1 said they got a second signal where they had told Salim they would be. Sergeant Ali asked for the luggage.
8. The luggage was brought from the shrubs near a house. Sergeant Ali arrested Salim (1<sup>st</sup> Appellant).
9. The other two suspects dropped the tusks and started running away. The Rangers gave chase and managed to arrest the 2<sup>nd</sup> Appellant but one suspect escaped.
10. When they returned they found the 1<sup>st</sup> Appellant had cut Sergeant Ali with a knife on the collar bone and he was bleeding.
11. The Rangers went to the home of the 2<sup>nd</sup> Appellant but they did not recover anything.
12. The Rangers recovered 8 more elephant tusks at the shrubs and they added the six which had been given to them making 14 tusks in total.
13. The tusks were weighed and found to be 200kgs.
14. The Appellants were interrogated and handed over to Voi Police Station.
15. PW2 Joto Nyawa a Clinical Officer at Moi Referral Hospital examined Sergeant Ali Ahmed Yussuf and produced a P3 form.
16. He said Sergeant Ali had sustained a sharp wound on the left clavical region which was stitched.
17. The 1<sup>st</sup> Appellant in his defence said on 13<sup>th</sup> December 2022 he woke up from his home and took his livestock to graze. He took them back in the afternoon and locked the animals.
18. He said there was an ongoing business of selling water melon at his home and customers went to buy from him for resale.
19. He said he lost his phone and he was not in communication with his customers who were coming from Macknon and from Taru.
20. The 1<sup>st</sup> Appellant said at 3p.m, he went to look for the customers at Macknon. He travelled to Taru and then to Macknon and arrived at 4p.m.
21. He said there were 3 villages at Macknon, Upper Centre and lower from the main town.
22. The 1<sup>st</sup> Appellant said he collected Kshs. 5,000/= from his customers and at 6p.m, he got to the stage and noted a white double cabin vehicle with someone standing outside wearing a black Kaunda.
23. The person signalled him with his hand and he went to him. The person told him they were looking for someone whom they were told was him.
24. They asked him for his identification. He showed them his identification and they said he was the person they were looking for.
25. He asked what the matter was, the person grabbed his hands from behind and fell him to the ground.
26. The person said he was government. There were others in the vehicle.
27. The 1<sup>st</sup> Appellant said he was handcuffed and put in the vehicle and taken to Taru – Mariakani.
28. The people asked him why he had travelled there and home was at Taru. He said he was taken to Voi Area. He was not aware whom they were since they were in plain clothes.



29. They took him to their office and identified themselves as KWS Officers and they told him he had two elephant tusks.
30. The 1<sup>st</sup> Appellant said he was taken to the police station at 3p.m and spent the night there and he was taken to court the following day and charged with charges he did not understand.
31. The 2<sup>nd</sup> Appellant said he was asleep at his home when he heard dogs barking. He went to open the door and he saw 4 people who arrested him.
32. The 2<sup>nd</sup> Appellant called his wife and a neighbour who said he was arrested at his home by people who said they were looking for elephant tusks.
33. The trial court found the two Appellants guilty as charged and convicted them with the offence of dealing in wildlife trophy of an endangered species contrary to Section 92(2) of the *Wildlife Conservation and Management Act* 2013.
34. The Appellants were sentenced to 7 years imprisonment each and the 1<sup>st</sup> Appellant was sentenced to a further 2 years imprisonment on Count II. The sentences for the 1<sup>st</sup> Appellant were to run consecutively.
35. The two Appellants have appealed to this court 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 Appellants.
  - iii. The learned Magistrate erred in law when she considered the evidence adduced by prosecution full of massive contradiction.
  - 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 and fact by convicting the Appellant to 7 years imprisonment without considering that the sentence meted on the Appellant was harsh and excessive.
  - vi. That the learned trial court Magistrate erred in law and fact by convicting the Appellant to 7 years imprisonment without considering my reasonable defence.
  - vii. That the learned trial court Magistrate erred in law and fact by convicting the Appellant to 7 years imprisonment without considering the period spent in remand prison.
36. The parties filed written submissions as follows;
37. The 1<sup>st</sup> appellant challenged their conviction on charges of dealing in wildlife trophies (elephant tusks) and assault during arrest, arguing that the prosecution's case was riddled with inconsistencies, contradictions, and unsubstantiated claims.
38. He contended that the prosecution witnesses—primarily Kenya Wildlife Service (KWS) officers—failed to provide credible or verifiable evidence.
39. The key points of contention include the lack of photographic proof of the alleged crime scene or recovered tusks, the absence of mobile phone data or call records to corroborate communication between the appellant and the arresting officer (PW3), and the failure to arrest or account for another individual present during the alleged transaction.



40. The 1<sup>st</sup> appellant disputed the assault charge, asserting that the injury to PW3 resulted from an accidental fall during a struggle, exacerbated by rainy conditions, and denies possessing any weapon, alleging the knife was planted.
41. The 1st appellant further highlighted investigative lapses, such as the failure to conduct fingerprint analysis on the tusks to link them to the appellant, the discrepancy in the number of tusks reported (14 vs. 16), and the lack of a recovery note or voice recordings to substantiate the allegations.
42. He argued that the investigating officer (PW5) neglected basic procedures like visiting the crime scene or interviewing the appellant, relying instead on hearsay.
43. Further, that the forensic expert (PW7) allegedly provided no concrete evidence connecting the tusks to the appellant or clarifying their origin.
44. The 1st appellant maintained that the arrest occurred at a matatu stage unrelated to the alleged crime and accuses the KWS of fabricating evidence to frame them.
45. He pleaded for acquittal, emphasizing the prosecution's failure to meet the burden of proof beyond reasonable doubt.
46. Alternatively, they request a reduced sentence, citing time already served in remand and their familial responsibilities, invoking Section 333(2) of Kenya's *Criminal Procedure Code* to account for pre-trial detention.
47. The 1<sup>st</sup> appellant's submissions urged the court to dismiss the conviction as unjust or, at minimum, to mitigate the sentence in the interest of justice.
48. The 2<sup>nd</sup> appellant's submissions also challenged his conviction and sentence for dealing in wildlife trophies, arguing that the prosecution failed to prove its case beyond reasonable doubt.
49. He contends that the trial magistrate erred in finding him guilty, as the evidence did not establish his knowledge or physical control of the elephant tusks. Specifically, the testimony of PW1 indicated that only six tusks were recovered, raising doubts about the origin of the remaining eight and undermining the claim that the appellant was involved in the alleged dealing.
50. Additionally, the investigating officer's failure to conduct an independent investigation and contradictions in witness testimonies cast further doubt on the prosecution's case.
51. The 2<sup>nd</sup> appellant also argued that the charges were defective, as they did not align with the evidence presented.
52. That the prosecution did not prove any actual buying or selling of the tusks, which is central to the definition of "dealing."
53. Furthermore, procedural irregularities were highlighted, including the failure to involve the appellant in the examination of the exhibits and the lack of proper certification of the inventory, which lacked an independent witness.
54. The 2nd appellant asserted that his constitutional right to a fair hearing was violated, as he was not served with the expert report used against him.
55. In mitigation, the 2nd appellant emphasized that he is a first-time offender, a sole breadwinner, and remorseful.



56. He argued that the seven-year sentence was excessive and failed to consider sentencing objectives such as rehabilitation and reintegration.
57. He requested that the court acquit him or, alternatively, reduce his sentence, taking into account the time he has already spent in remand custody.
58. Overall, the 2<sup>nd</sup> appellant urged the court to find merit in his appeal and deliver justice by overturning his conviction or imposing a more lenient sentence.
59. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence adduced at the trial court and to come up with its own conclusion whether or not to support the trial court's findings.
60. This principle was affirmed in the case of *Okeno v Republic* [1972] EA 32, where the Court of Appeal held that a first appellate court must subject the entire evidence to a fresh and exhaustive examination and make its own findings on the evidence while giving due allowance for the fact that it did not observe the witnesses' demeanor.
61. The issues for determination in this appeal are as follows;
  - i. Whether the prosecution proved the guilt of the two appellants to the required standard.
  - ii. Whether the sentence was excessive.
  - iii. Whether the appeal should be allowed.
62. I have carefully re-evaluating the evidence adduced before the trial court and submissions filed herein, this court finds that the prosecution proved the case against the 1st Appellant (Salim Chibonja Myala) beyond reasonable doubt under Section 92(2) of the *Wildlife Conservation and Management Act* (WCMA) 2013 and Section 253(a) of the *Penal Code*.
63. The prosecution established through PW1 (KWS Ranger Lobula Dominic) and PW3 (Sergeant Ali Ahmed Yussuf) that the 1st Appellant was actively involved in the illegal sale of elephant tusks.
64. There is evidence of a prearranged meeting between the 1st Appellant and undercover KWS officers posing as buyers.
65. The recovery of 14 elephant tusks (weighing 200kg) near the scene, corroborated by multiple officers.
66. Assault during arrest, where the 1st Appellant inflicted a knife wound on Sergeant Ali, confirmed by PW2 (Clinical Officer Joto Nyawa) through a P3 form.
67. The 1st Appellant's defence—that he was merely collecting money from watermelon customers—was inconsistent and did not rebut the prosecution's direct evidence.
68. His claim that the knife was "planted" was unsupported, whereas the P3 form proved the injury was real and sustained during the arrest.
69. The trial court correctly applied Section 92(2) WCMA, which imposes strict liability on those found dealing in wildlife trophies (*Republic v Paul Mwangi & Another* [2016] eKLR).
70. The 7-year sentence for the wildlife offence was lawful, and the additional 2 years for assault under Section 253(a) *Penal Code* was justified given the violent resistance.
71. However, the sentences should run concurrently (*Ahamad Abolfathi Mohammed v Republic* [2018] eKLR) rather than consecutively, as the offences arose from the same transaction.
72. However, the prosecution failed to link the 2<sup>nd</sup> Appellant to the illegal trade.



73. There was no evidence he handled the tusks—PW1 testified that the 2<sup>nd</sup> Appellant fled when the officers arrived.
74. There was no recovery from his home—KWS searched but found no trophies or incriminating evidence.
75. The 2<sup>nd</sup> appellant's identification was weak, unlike that of the 1<sup>st</sup> Appellant, there was no prior communication or proof of his role in the transaction.
76. The charge of "dealing" under Section 92(2) WCMA requires proof of knowledge and control of the trophies (Republic v Joseph Njuguna [2017] eKLR).
77. Since the 2<sup>nd</sup> Appellant was merely present at the scene, his conviction was unsafe.
78. The 2<sup>nd</sup> Appellant's Appeal (Chivoro Ndamau Chivoro) is allowed.
79. His conviction is quashed and sentence set aside.
80. The 2<sup>nd</sup> appellant to be released forthwith unless otherwise lawfully held for any other reason.
81. The 1<sup>st</sup> Appellant's appeal is dismissed and the sentences upheld save that the two sentences shall run concurrently.
82. The period that the 1<sup>st</sup> appellant stayed in custody before he was sentenced to be deducted from the seven (7) year imprisonment term.

**DATED, SIGNED AND DELIVERED THIS 2<sup>ND</sup> DAY OF JULY 2025 VIRTUALLY VIA MT AT VOI HIGH COURT.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistant: Millicent

Prosecutor: Ms. Kanyuira

Appellant

