



**Peter v Republic (Criminal Appeal E066 of 2024)
[2025] KEHC 10323 (KLR) (11 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10323 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL APPEAL E066 OF 2024**

**A MSHILA, J
JULY 11, 2025**

BETWEEN

ALBANUS KIOKO PETER APPELLANT

AND

REPUBLIC RESPONDENT

*(Appeal originating from the conviction and sentence by Hon. Boaz Ombewa, (SPM)
in Kahawa Criminal Case No.E029 of 2021 delivered on 28th February, 2023)*

JUDGMENT

1. The Appellant, Albanus Kioko Musyoki, was charged before the Senior Principle Magistrate’s Court in Kahawa in Criminal Case No. E029 of 2021 for the offence of dealing in wildlife trophies Contrary to Section 92(2) of the [Wildlife Conservation and Management Act](#) 2013. The particulars are that on the 23rd day of August 2021, between 1800HRS at Devki and Mlolongo in Mavoko sub-county within Machakos county jointly with others were caught dealing in wildlife trophy namely one piece of elephant tusk weighing 1.545 K.G with a street value of Ksh. 250,000/- without a permit in contravention of the provisions of the said Act.
2. Upon being found guilty, the trial court convicted the Appellant and sentenced him to 7 years imprisonment. Being aggrieved by the said conviction and sentence the Appellant has lodged this Petition of Appeal based on the following grounds of appeal;
 - a. That the Learned Magistrate erred in law and fact in failing to appreciate that the essential ingredients/elements of the offence as charged were not proved against the Appellant.
 - b. That the Learned Trial Magistrate erred in law and fact in convicting the Appellant based on insufficient evidence to prove the charges against the Appellant.



- c. That the learned trial Magistrate erred in law and fact in disregarding the defence by the Appellant.
 - d. That the learned trial Magistrate erred in law and fact in sentencing the Appellant to serve seven years imprisonment based on an erroneous conviction.
3. The prosecution called five witnesses in support of its case. Veronica Onduso (PW1) in her testimony stated that she is an employee of the National Museums of Kenya. She received an exhibit for identification; a 22cm long cut from the premolar end. After microscopic examination she discovered Schreger lines which are only found in elephant tusks. She compared it to the elephant tusks in the Museum and confirmed the exhibit was an elephant tusk.
 4. CPL Lydia Njeri (PW2) is an employee of Kenya Wildlife Services (KWS) attached to Investigation Department at the Headquarters. On the 23rd August 2021, she received intelligence information about people from Athi River in possession of elephant tusks who were looking for a buyer. She was instructed to conduct an operation and arrest the suspects. She stated that they planned a meet-up with the sellers, purporting to be buyers. On arrival at the agreed place at Devki, the Appellant identified himself and told her that they were selling elephant tusk at Ksh.250,000/=. It is at that point that SGT Ondieki and Mr. Odongo emerged and arrested the Appellant. She stated that the Appellant was carrying a manila bag where the elephant tusk was stored. She stated that the Appellant was booked at Langata Police Station.
 5. SGT Stephen Ondieki (PW3) an employee of KWS and based at the Headquarters deployed in the Investigation Department corroborated the testimony of PW2. He testified that they demanded a certificate of ownership for the elephant tusk and after failing to produce one they arrested the Appellant.
 6. Michael Odongo (PW4) is an employee of KWS attached to Cyber Crime Unit as a Digital Forensic Examiner. He testified that on the 24th August 2021 he received two phones via an exhibit memo for analysis. He retrieved 22 call logs, 2 contacts, 5 instant messages and 7 data files from the Appellant's phone numbers all relating to this case.
 7. CPL Anthony Mbau (PW5) is an employee of KWS attached to the Investigation Department at the Headquarters. On the 24th August 2021, he was assigned to investigate a case where two suspects had been arrested for dealing with wild trophies. He took statements of the arresting officers and visited the scene with the officers.
 8. The defence called two witnesses. These being Accused person 1 and 2. Alabanus Kioko Musyoki (DW1) testified that he is a resident of Embakasi. On 23/08/2021 at around 6.00pm, he was lured to Cabanas under the pretext of identifying the Appellant and was instead arrested, taken to Langata, made to hold what officers alleged was an elephant tusk. He denied being at the scene or being involved.
 9. Alabanus Kioki Peter (DW2) testified that he is a resident of Nyambura Athi River. He stated that on 23/08/2021, he left Daystar University on a boda boda. Along the way, the rider got a call, stopped the bike, and walked off, leaving him behind. Moments later, he heard gunshots and lay down. A man approached and asked who owned the motorbike; when he said he didn't know, he was taken to a white car with two men and a woman who pressed him for answers. He was then taken to Athi River Police Station, and his phone was taken. When it rang, the officers answered it outside, but he didn't know what was said. On the way to Langata, Accused 1 was arrested. He stated that the boda boda rider was never arrested.



10. The trial court was satisfied that the prosecution had proved its case beyond reasonable doubt and that the Appellant and Accused 1 were dealing in wildlife trophies without a permit and that the Appellant was positively identified.
11. The Appellant and Accused 1 were convicted of the offence of dealing in wildlife trophies without a permit. The Appellant was sentenced to imprisonment for a term of 7 years.
12. The parties were directed to canvass the appeal by way of written submissions.

Appellant's Submissions

13. The Appellant in his written submissions submitted that the essential ingredients/elements of the offence as charged were not proved against the Appellant. Reliance was placed in the case of *Ndeka v Republic* Criminal Appeal No. E007/2021. There was insufficient evidence adduced to demonstrate that the Appellant herein was found dealing in the alleged wildlife trophy. The prosecution failed to discharge its burden of proof and its evidence against the Appellant had so many gaps which it left to the trial court to struggle to fill. Reliance was placed in the case of *Philip Muiruri v Republic (2006) eKLR Mativo J*. He submitted that the circumstantial evidence adduced by the arresting officers who were on the scene is contradictory evidence. He argued that the alleged communication between him and PW2 was not proved in court and that PW2 confirmed that her phone was never subject to a forensic analysis. Consequently, he argues that the conviction was erroneous as the sentence meted upon him was based on erroneous conviction.

Respondent's Submissions

14. The Respondent opposed the appeal. He submitted that the elements of the offence were proved. The Appellant was arrested while in actual possession of the tusk and in the process of negotiating its sale with an undercover KWS officer. This therefore amounts to the offence of dealing in Wildlife trophy of endangered species without a license. Reliance was placed in the case of *Hussein Wanjala Wekesa V Republic (2021) eKLR*. As to the issue of forensic evidence, it was submitted that PW4 retrieved the Appellant's phone number which revealed communications between the numbers linked to the transaction. He submitted that the Prosecution adduced clear evidence that the Appellant made repeated phone calls to his co-accused about the transaction and arrived at the pre-agreed location. He argued that it is on record that the trial Magistrate took into account the Appellant's defence. It is clear to the court that the Appellant did not adduce evidence to support his claim that the police lured him to the scene of the crime. His defence was mere denial and the Magistrate is not obligated to accept the defence merely because it was offered.

Issues For Determination

15. After reading the respective written submissions this Court has framed the following issues for determination;
 - a. Whether the Prosecution proved the ingredients of the offence.
 - b. Whether the trial court considered the Appellant's defence.
 - c. Whether the conviction and sentence are lawful.



Analysis

16. This being a first appeal, the court is clothed with the jurisdiction to re-evaluate and re-analyze the evidence of the trial court and arrive at its own independent conclusion as was cited in the case of *David Njuguna Wairimu v Republic* (2010) eKLR where the Court of Appeal stated that:-

“The duty of the first appellate court is to analyze and re-evaluate the evidence which was before the trial court and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court. There are instances where the first appellant court may, depending on the facts and circumstances of the case, come to the same conclusions as those of the lower court. It may rehash those conclusions. We do not think there is anything objectionable in doing so, provided it is clear that the court has considered the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decisions.” Reference is also made to the case of *Okeno v R* (1972) EA 32.

17. The Appellant was charged with the offence of dealing in wildlife trophies which is provided for under Section 92(2) of the *Wildlife Conservation and Management Act* 2013 which provides that:-

“A person who, without permit or exemption issued under this Act, deals in a wildlife trophy, of any critically endangered or endangered species as specified in the Sixth Schedule or listed under CITES Appendix I, commits an offence and shall be liable upon conviction to a term of imprisonment of not less than seven years.”

Further, Section 3 of the *Wildlife Conservation and Management Act* 2013 outlines the definition of a dealer being:-

“dealer’ means any person who, in the ordinary course of any business or trade carried on by him, whether on his own behalf or on behalf of any other person-

- a. sells, purchases, barter or otherwise in any manner deals with any trophy;
- b. or cuts, carves, polishes, preserves, cleans, mounts or otherwise prepares any trophy; or
- c. transports or conveys any trophy;”

18. When read together, Section 92(2), Section 3 above outline the main ingredients of the offence of dealing in Wildlife Trophy.

Whether the Prosecution proved the ingredients of the offence.

19. The particulars of the offence as set out in the charge sheet were that the appellant and his co-accused were jointly found dealing in Wildlife trophy of endangered species. The evidence tendered by the prosecution sufficiently prove that the appellant was arrested in possession of elephant tusks with the intention of selling them. The Appellant was negotiating with PW2 the price of the elephant tusk being Ksh.250,000/= Further, the Appellant was arrested with wildlife trophies without a license. The Appellant transported the elephant tusk to PW2, the meeting place in this matter being Devki. It is worth noting that this was not the original meet up location and it is the Appellant who changed the location. The appellant’s contention of having been framed by the officers cannot therefore stand. This court having reviewed the lower court record, finds that the Prosecution proved its case



beyond reasonable doubt and met the requirements of this offence. The appellant was indeed found in possession of the elephant tusk.

Whether the trial court considered the appellant's defence.

20. The appellant claims that the trial court did not consider his defence. This allegation is refuted by the prosecution who argue that the appellant's defence was considered by the court. A perusal of the record, shows that the trial court found the appellant's defence to be a mere denial. This court having reviewed the lower court record, finds that indeed the accused was dealing in wildlife trophies without a license as proved by the prosecution's evidence and the accused's defence is indeed just a casual denial. The evidence of the Prosecution coupled with the witness statements are clear evidence that the appellant was indeed dealing in wildlife trophies.

Whether the conviction and sentence is lawful.

21. The appellant was charged in terms of section 92(2) of the [Wildlife Conservation and Management Act](#) which states as follows:

“(2) A person who, without permit or exemption issued under this Act, deals in a wildlife trophy, of any critically endangered or endangered species as specified in the Sixth Schedule or listed under CITES Appendix I, commits an offence and shall be liable upon conviction to a term of imprisonment of not less than seven years.”

22. The law provides for a term of imprisonment of not less than seven years. The appellant was sentenced to seven years being the minimum sentence provided as such this court finds that the sentence of seven (7) years imprisonment imposed by the learned trial magistrate cannot be said to be harsh and excessive. The sentence imposed by the learned magistrate is lawful and therefore stands.

Findings And Determinations

23. For the forgoing reasons this Court finds the appeal to be devoid of merit in its entirety and it is hereby dismissed.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 11TH DAY OF JULY, 2025.

A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

Gacharia - For the State

Miss Musau for the Appellant

Appellant – present from Kiambu Prison

