



**Tajiri & another v Republic (Criminal Revision E011 of 2024)  
[2024] KEHC 1022 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1022 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CRIMINAL REVISION E011 OF 2024  
GMA DULU, J  
FEBRUARY 8, 2024**

**BETWEEN**

**SALONE TAJIRI ..... 1<sup>ST</sup> APPLICANT**

**KATOO MIRIATI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before me is a request for revision of the Magistrate’s court conviction and sentence filed by counsel John Bwire & Associates Advocates in respect of the two applicants herein, who were charged with two others in the Magistrate’s court.
2. The request was filed with a supporting affidavit sworn by Salone Tajiri, one of the applicants on 25<sup>th</sup> January 2024, in which it was deponed that he was charged with entering or residing in a national park or reserve otherwise than under licence or permit contrary to Section 102(i)(h) of the [Wildlife Conservation and Management Act](#).
3. It was also deponed that the facts as read to the court by the Prosecutor on 20<sup>th</sup> December 2023 were however, that he and the 2<sup>nd</sup> applicant were found sleeping besides 500 cows, and that as such they should have been charged under Section 102(2) read with Section 102(3) of the [Wildlife Conservation and Management Act](#) 2013, and not under Section 102(1) of the [Act](#).
4. The applicants counsel Mr. Bwire made brief submissions in support of the request for revision of the trial court’s orders.
5. On his part, the learned Prosecuting Counsel Mr. Sirima submitted that though the charge was brought under Section 102(1)(a) of the [Act](#), the facts read related to a different section and offence.



6. According to Prosecuting Counsel therefore, the sentence herein of Kshs. 200,000/= fine in default 2 years imprisonment should not have been imposed.
7. In response to these submissions of the Prosecuting Counsel, learned counsel for the applicants Mr. Bwire submitted that the applicants had already served two (2) months in custody and should thus be discharged and acquitted.
8. Having considered the submissions and perused the trial court record, I note that the applicants were charged with others with illegal entry into a national park, but the facts read by the Prosecutor in court related to having cattle in the park, which was a different offence under the Act, and was at variance with the description or facts in the charge sheet.
9. Under the principles stated in the case of *Adan v Republic* (1973) EA 445, the trial court should in those circumstances, not have convicted and sentenced them but should have asked for amendments of the charge or entered a plea of not guilty, as otherwise the applicants would end up being convicted for an offence they were not charged with as happened herein, which is wrong.
10. I thus exercise this court's revision powers, and quash the convictions of the two applicants, and set aside the sentence imposed herein. The applicants will be released from custody unless otherwise lawfully held.

**DATED, SIGNED AND DELIVERED THIS 8<sup>TH</sup> DAY OF FEBRUARY 2024 AT VOI IN OPEN COURT.**

**GEORGE DULU**

.....

**JUDGE**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

**In the presence of:-**

Alfred/Trizah – Court Assistants

Mr. Bwire for the applicants 748471558

Mr. Sirima for State

