



**Ndege & another v Republic (Criminal Revision 234 of 2024)
[2024] KEHC 10911 (KLR) (17 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10911 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 234 OF 2024
DR KAVEDZA, J
SEPTEMBER 17, 2024**

BETWEEN

JANE WAWIRA NDEGE 1ST APPLICANT

NANCY TRUPHENA OTANGA 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This file was brought before me for the decongestion exercise pursuant to the Chief Justice’s memo dated 7/12/2022, which provides that inmates who are serving three (3) years imprisonment or less, or those serving long sentences but have a balance of three (3) years or less may be considered for non-custodial sentences.
2. I have gone through the file and noted that Applicants were jointly convicted by the trial court for the offence of dealing in wildlife trophy without a permit contrary to section 95 of the *Wildlife Conservation and Management Act*, 2013 (the Act). They were both sentenced to pay a fine of Kshs. 1,500,000/=, in default to serve 5 years imprisonment.
3. At the onset, it is noteworthy that in the present case, the trial court opted to impose fines rather than imprisonment. In that case, the learned trial magistrate ought to have imposed the default sentences pursuant to Section 28(2) of the *Penal Code*. Under the provision, where the fine imposed exceeds Kshs. 50,000/= the default sentence must not exceed 12 months imprisonment. It follows then that the sentences imposed against the Applicants herein was illegal, which represents an irregularity on the sentences.
4. Therefore, the sentence of a fine of Kshs. 1, 500,000/= in default to serve 5 years imprisonment is substituted with a fine of Kshs. 1,500,000 in default to serve 1-year imprisonment.



5. I shall now turn back to determining whether the Applicants are eligible for a non-custodial sentence.
6. Two Probation Reports were filed with respect to both Applicants.
7. For the 1st Applicant, her report indicates that she has been receptive to rehabilitation programs and is ready to serve a non-custodial sentence. She is remorseful and deeply regrets her actions. The findings in the probation report are in favour of the 1st applicant to serve a non-custodial sentence.
8. Similar findings were recorded in the Probation Report with respect to the 2nd Applicant.
9. I therefore find that both Applicants are suitable to serve a non-custodial sentence and order as follows:
 - I. The 1st Applicant, Jane Wawira Ndege, shall be placed on community service for twelve (12) months at Mama Lucy Kibaki Hospital, under the supervision of the Nurse in Charge.
 - II. The 2nd Applicant, Nancy Truphena Otanga, shall be placed on community service for twelve (12) months at Saika Chief's Office, under the supervision of Saika Location Chief.
10. File closed.
Orders accordingly.

RULING DELIVERED THIS 17TH DAY OF SEPTEMBER 2024.

D. KAVEDZA

JUDGE

