



**Matayo v Director Public Prosecutions (Criminal Revision
E331 of 2022) [2023] KEHC 389 (KLR) (16 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 389 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION E331 OF 2022
JN ONYIEGO, J
JANUARY 16, 2023**

BETWEEN

SABURU MATAYO APPLICANT

AND

DIRECTOR PUBLIC PROSECUTIONS RESPONDENT

(Being an application for review of sentence under section 362 and 364 of the criminal code)

RULING

1. On November 9, 2022, the applicant herein was arraigned before the principal magistrate's court at Taveta charged with the offence of entering into a protected area contrary to Section 102(1)(a) as read with Section 102 (1)(h) of the *Wild Life Conservation and Management Act 2013(revised 2018)*. Particulars are that on November 8, 2022 at around 1000hours at Amboseli in Jipe area within Tsavo National park in Taita Taveta county GPS coordinates 37M0378570 UTM9589442 entered into the said protected area without authorization.
2. Count two, he was charged with the offence of Being unlawfully present in kenya contrary to Section 53(1)(J) as read with section 53(2) of the *Kenyan Citizen Immigration Act*. Particulars were that on November 8, 2022 at around 1000 hrs at Amboseli in Jipe area within Tsavo West National Park in Taita Taveta County GPS coordinates 370378570 UTM 9589442 entered in the said area without a valid passport and being a Tanzanian national.
3. Having pleaded guilty, he was convicted and subsequently sentenced to a fine of kshs 200, 000 in default to serve 2 years in jail in respect of count one and a fine of Kshs 50, 000 in default to serve ten months imprisonment in respect to count two.
4. Aggrieved by the said sentence, he moved to this court vide a notice of motion filed on November 14, 2022 seeking revision of the said sentence. The application is based on averments contained in the affidavit in support on grounds that; he is remorseful; the sentence is excessive in the circumstances;



he is the sole bread winner of his family; the imposition of the minimum sentence is unconstitutional and that, he had pleaded guilty thus saving court's time.

5. During the hearing, the applicant simply adopted the content of the affidavit in support. On its part, the state represented by Mr Sirima opposed the application thus stating that the sentence imposed is legal and appropriate taking into account the nature of the offences committed. I have considered the application herein and the response thereof. Further, I have considered the seriousness of the offence committed vis avis the sentence imposed.
6. It is trite law that this court is empowered to exercise its supervisory powers under Article 165(6) and (7) of the Constitution to call for a subordinate court's record so as to make any directions or order to ensure fair administration of justice. Besides, under Section 362 and 364 of the criminal procedure code, the High Court is empowered to call upon and examine the record of any criminal proceedings from a subordinate court so as to satisfy itself as to the correctness, legality, propriety on sentence passed or order made and on the regularity of the proceedings.
7. I am alive to the fact that sentencing is at the discretion of the trial court. However, this court in its appellate capacity is empowered to intervene where the sentence meted out is illegal or excessive. See Shadrack Kipkoech Kogo Versus Republic Criminal Appeal Number 25 of 2003 where the Court of Appeal held that sentencing is at the discretion of the trial court and that an appellate court can only interfere or intervene if it is shown that the trial court took into consideration irrelevant factors, applied wrong principles of the law or that the sentence was excessive and therefore an error.
8. Considering the nature and seriousness of the offence committed and further taking into account that the trial court imposed the minimum sentence provided for under the relevant provisions, I do not find any illegality, unconstitutionality nor excessiveness in the sentence imposed. In the circumstances, it is my holding that the application herein is not merited and the same is accordingly dismissed.

Dated, signed delivered virtually at Mombasa this 16th day of January 2023.

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J.N. ONYIEGO

JUDGE

