



**Hamisi v Republic (Criminal Revision E334 of 2022)
[2023] KEHC 19468 (KLR) (4 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19468 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION E334 OF 2022
GMA DULU, J
JULY 4, 2023**

BETWEEN

ARISON HAMISI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before me is an application for review of sentence filed on December 8, 2022 by way of notice of motion.
2. The prayers in the application are as follows:-
 1. (Spent).
 2. This court be pleased to call for and examine the lower court records in dealing in meat of wildlife species c/s 98(1) as read with section 105 of WCMA 2013 and entering in a protected area contrary to section 102(1)(a)(b) of WCMA Act 2013 in criminal case No E143/2022 (Taveta).
 3. That the court is empowered (to review) under section 362 and 364 of Criminal Procedure Code and article 159 and 160 of the Constitution of Kenya.
 4. That the applicant is poor and unable to pay the costs of criminal review.
 5. Such other orders as the court may deem just in the circumstances of the case.
3. The application has grounds on the face of the notice of motion that the applicant was sentenced to 5 years imprisonment for dealing in meat of wildlife species and 1 year imprisonment or a fine of Kshs 60,000/= for entering a restricted area, and that the sentence was excessive and harsh.



4. Before considering the application, this court ordered the probation officer to prepare and file a community service report, and such report dated March 7, 2023 was prepared and filed by David Maina Gakuri, a Community Service Officer.
5. I note that from the report, it is recommended that this court should await conclusion of a pending defilement case against the applicant before considering the request for review of sentence herein.
6. The application was canvassed through oral submissions. In this regard, the applicant stated that he was merely a driver and that the other person with whom he was charged, was put on probation by the High Court.
7. The learned principal prosecuting counsel Mr Okemwa on his part, opposed the application and stated that the 5 years imprisonment sentence for count 1 was the minimum sentence for the offence, while the fine imposed for count II was lawful. Counsel also stated that the period the applicant was in custody during trial was taken into account in sentencing him.
8. I have no doubt that the applicant is a person of low financial means. I thus accept that he should not be charged fees for this application for review of sentence.
9. Having said so, I note that the co-accused person, pleaded guilty at the trial and did not waste the court's time. The applicant however pleaded not guilty and the matter went to full trial. It is also true as stated by the applicant, that the sentence of co-accused Francis Mwarema was later reduced to a probation of 2 years from February 16, 2023 by the High Court.
10. It is instructive to note however, that the applicant herein has a pending criminal case in Wundanyi which has not been concluded. It is a case of a serious sexual offence. The applicant has also not appealed in this present case, though he claims to have been only a hired driver.
11. In my view therefore, it is not appropriate at this time for this court to exercise its discretion to review the sentence herein, or consider the alternative of a probation sentence presently. Such a probation sentence now, will in my view send a wrong message on the purposes of sentencing as there is a pending sexual offences case against the same applicant, which he has not disputed.
12. I thus disallow the application herein for review of sentence presently, but order that the applicant can still apply again for review of sentence but after the conclusion of the pending sexual offences case. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 4TH DAY OF JULY 2023 AT VOI IN OPEN COURT.

GEORGE DULU

JUDGE

In the presence of;-

Applicant

Mr. Sirima for State

Mr. Otolo court assistant

