



**Koech v Republic (Criminal Revision E084 of 2023)
[2023] KEHC 24044 (KLR) (23 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24044 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL REVISION E084 OF 2023
RL KORIR, J
OCTOBER 23, 2023**

BETWEEN

DANIEL KIBET KOECH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This Revision came to me by way of a letter dated 12th October 2023 addressed to the court by the officer in charge, Bomet Prison. In making the request for revision of sentence the officer in charge stated that the prison did not have facilities to accommodate the convict who was transgender.
2. The convict was charged with offences under the [Wildlife Conservation and Management Act](#) 2013. In count 1, he was charged with dealing in the carcass of a wildlife species contrary to section 98(1) of the [Wildlife Conservation and Management Act](#) 2013. The particulars of the offence were that on 8th October 2023 at around 1800hours in Ndarawetta, Nyongores Government Forest, Mau Complex within Bomet County, the Applicant was found dealing in meat of wildlife species namely Bushbuck meat to wit 15 kgs of street value of Kshs 7,500/= without a permit from the Director General of Kenya Wildlife Services.
3. In count 2, he was charged with conveying a weapon into a protected area contrary to section 102 (f) of the Wildlife Conservation Act 2013. The particulars of the offence were that on 8th October 2023 at around 1800hours in Ndarawetta, Nyongores Government Forest, Mau Complex within Bomet County, the Applicant was found in possession of a weapon in a protected area namely one panga and one kitchen knife without authorization from the Director General of Kenya Wildlife Services.
4. The Appellant was convicted on his own plea of guilty. On count one, he was fined Kshs 50,000/= and in default he was to serve a one year prison sentence. On count two, he was fined Kshs 50,000/=



and in default he was to serve a one year prison sentence. The trial court ordered that both sentences run consecutively.

5. This court's Revisionary jurisdiction is exercised under the provisions of section 362 of the *Criminal Procedure Code* which states:-

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

6. For this Revision, the powers of this court are provided for under section 364 (1) (a) of the *Criminal Procedure Code* which provides:-

In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence.

7. In the case of *Joseph Nduvi Mbuvi vs Republic* (2019) eKLR, Odunga J. (as he then was) held that:-

“In my view, the revisionary jurisdiction of the High Court should only be invoked where there are glaring acts or omissions but should not be a substitute for an appeal. In other words, parties should not argue an appeal under the guise of a revision. It is for this reason that the decision whether or not to hear the parties or their advocates is discretionary save for where the orders intended to be made will prejudice the accused person. As was stated by the High Court of Malaysia in *Public Prosecutor vs. Muhari Bin Mohd Jani and Another* [1996] 4 LRC 728 at 734, 735:-

“The powers of the High Court in revision are amply provided under section 325 of the *Criminal Procedure Code* subject only to subsections (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice...If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion...This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case”.

8. I called for the trial court proceedings and examined the record. From the outset it was clear that there was no irregularity in the plea taking, conviction and sentencing of the convict. He was given a custodial sentence which was lawful. I must also hasten to add that the revision of sentence has been requested purely because of lack of a prison facility to accommodate the convict.
9. I called for a Probation Officer's report. The Probation Officer stated that he interviewed the convict as well as the prison authorities who confirmed the lack of a suitable accommodation. According to the report lack of suitable accommodation would hinder rehabilitation of the convict in prison. In his recommendation, the Probation officer stated that the convict could be released to serve under probation. That the convict had good social networks and he could be supervised effectively under non-custodial sanctions.



10. I have considered the circumstances of the case, as well as the probation report. This court takes notice that lack of appropriate facilities in Bomet Prison for convicted persons not assigned the male or female gender would hinder prison rehabilitation of such convicts. Indeed, it may even expose the convict to unwarranted ridicule and sexual assault.
11. In the final analysis, I revise the sentence by setting aside the prison term. The convict is released from prison to serve 2 years' probation on each count. The sentences shall run concurrently.

Orders accordingly

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 23RD DAY OF OCTOBER, 2023

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R. LAGAT-KORIR

JUDGE

