



**Okumu v Republic (Criminal Revision E466 of 2024)
[2024] KEHC 16279 (KLR) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16279 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL REVISION E466 OF 2024
PN GICHOHI, J
DECEMBER 17, 2024**

BETWEEN

VINCENT OKUMU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant (herein referred to as the accused) has moved this Court vide application dated 7th August 2024 seeking sentence review. The background of the application is that before the trial court, the accused was arraigned on 15/04/2024 in Criminal Case No E909 of 2024 where he was faced two counts.
2. In Count 1, he was charged with the offence of entering into a protected area without a permit or any other lawful exemption contrary to section 102 (1) (a) as read with section 102 (1) (h) of the [Wildlife Conservation and Management Act](#), 2013.
3. The particulars of that count are that on the 14th day of April, 2024 at around 1300 hrs at Vietnam area in Lake Nakuru National Park, Nakuru East Sub- County within Nakuru County at GPS co-ordinates 37M 0173983 UTM 9963378, he was found to have entered into the said protected area on foot without a permit from the Director General Kenya Wildlife Service.
4. In count 2, he was charged with the offence undertaking extractive activity in Wildlife protected area without a permit or any other lawful exemption contrary to section 102 (1) (g) as read with section 102 (1) (h) of the [Wildlife Conservation and Management Act](#) 2013.
5. The particulars thereof are that on 14th day of April, 2024 at around 1300 hrs at Vietnam area in Lake Nakuru National Park, Nakuru East Sub- County within Nakuru County at GPS co-ordinates 37M 0173983 UTM 9963378, he was found undertaking extractive activity namely fishing and he was in



possession of three (3) sacks. One (1) fishing net, 1 and twenty (20) Kilograms of fish without a permit from the Director General, Kenya Wildlife Service.

6. He pleaded guilty on both counts and on 8/5/2024, he was sentenced to pay a fine of Kshs 200,000/= in default to serve two (2) years imprisonment on each count.
7. The accused now states that the proceedings before the trial court reflect that he was a first offender, a young man, was remorseful and that he was trying to sustain his young family that is wholly dependent on him.
8. Citing the powers of this Court under Section 362- 363 of the *Criminal Procedure Code*, he urges the Court to call for the trial court record to verify the correctness, legality or propriety of the trial court's findings, sentence and sentence passed.
9. He states that the conviction is not reflective of the circumstances that led to the commission on the offence. Further, he states the finding was irregular, and that the conviction and sentence were too harsh and unrealistic. He therefore urges this Court to review the same.
10. In his oral submissions before this Court, his counsel, Mr. Matoke states that the accused was sentenced to four years imprisonment. While associating himself with the Sentence Review Report availed before this Court, he urges this Court to substitute the sentence with as non- custodial sentence.
11. On his part, Mr. Salim Asimani urges the Court to adopt the recommendation in the Sentence Review Report dated 15/10/2014 prepared by his colleague Kwamboka Elizabeth.
12. He explains that the accused's relatives are willing to receive him back home and promise to support him in a business that will engage in so as to support his family.
13. In rejoinder, Mr. Kihara for the Prosecution/ Respondent urges the Court to consider that the accused person was arrested in a protected area and that fish was recovered from him. While emphasising that the offence is prevalent and that the fish in the said lake is now considered poisonous and therefore harmful to the public, he states that he does not concur with the report by the probation Officer. He urges the Court to uphold the sentence.
14. It is a fact that High Court has powers under Section 362 of the *Criminal Procedure Code* to:

“...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.”
15. This Court has called for and perused the lower court record. The accused person understood the charges that were read to him in Kiswahili language which he said he understood. He pleaded guilty to the charges. Since the accused herein is aggrieved by both conviction and sentence in this revision, Section 364 of the *Criminal Procedure Code* provides that: -
 - (1) 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—
 - (a) 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;
 - (b) in the case of any other order other than an order of acquittal, alter or reverse the order.



- (c) ...
- (2) ...
- (3) ...
- (4) ...
- (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.” [Emphasis added]
16. The accused person ought to have filed an appeal if aggrieved by the conviction as the redress sought is not available in this revision.
17. Having been so convicted, the sentence is provided for under section 102 (1) (h) of the *Wildlife Conservation and Management Act* 2013 that is, “a fine of not less than two hundred thousand shillings or to imprisonment of not less than two years or to both such fine and imprisonment.”
18. That is the sentence the trial court meted on the accused person. The issue then is whether this Court should interfere with that sentence. The trial court’s record shows that the accused person had no previous records. He had this to say in mitigation which was also in Kiswahili language: -
- “I pray for the court to forgive me of the offence that I did. I have a family that depend on me. My wife is sick. She delivered recently through caesarean. She still at PGH. The court can give me CSO.
19. While sentencing the trial court had this to say: -
- “The accused is a first-time offender. I have noted his remorseful, however the offence herein is wildlife offence and carries hefty minimum penalty. I cannot go below the minimum penalty recommended. In short, my hands are tied, accused fined Kshs 200,000/= in default to serve two years imprisonment in each of the count to run consecutively.”
20. That sentence inherently implies that the accused person would serve four (4) years if he fails to pay the stated fines for reasons that the trial court’s “hands were tied.”
21. It is clear that it is the manner in which the penal sections of the charges are coached making them mandatory seemingly taking away the trial court’s discretion thus disregard the mitigating factors given by the accused person who was clearly a first offender and certainly remorseful.
22. For record purposes, the need to provide for his family is not a reason for the accused person to seek such provision in a rested and prohibited area. There are other lawful activities elsewhere he could have engaged in to provide for his family.
23. However, the mitigating factors herein should have pricked the trial court to call for pre-sentence report but it was not done. The provisions of the law under which the accused was charged were not a bar to seeking more information on the offender so as to provide an active non- custodial sentence.
24. Putting all factors into consideration, this Court is not persuaded by the objection by the Respondent. This a suitable case for revision of sentence herein. The sentence review report availed herein shows that the accused had already served five (5) months as at the date of the report being 15/10/2024. The Probation Officer’s recommendation is that the accused herein is suitable to serve the remainder of the sentence on probation.



25. In the circumstances, the sentence by the trial court be and is reviewed in that the accused person shall serve the remainder of the sentence a probation for three (3) years.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 17TH DAY OF DECEMBER, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

Mr. Matoke for Applicant

Mr. Kihara for Respondent

Ruto - Court Assistant

