



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**(CORAM: CHERERE -J)**

**CRIMINAL APPEAL NO. NO. 174 OF 2019**

**CONSOLIDATED WITH CRIMINAL APPEAL NO. NO. 175 AND 176 OF 2019**

**BETWEEN**

**JOSEPH KIMANZI MUSYOKA.....1<sup>ST</sup> APPELLANT**

**SAMUEL GITONGA.....2<sup>ND</sup> APPELLANT**

**PETER KIMATHI.....3<sup>RD</sup> APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

**(Appeal against sentence in Maua Chief Magistrate's Court Criminal Case No. 837 of 2018**

**by Hon. A.G.Munene (SRM) on 23<sup>rd</sup> April, 2018)**

**JUDGMENT**

**The Trial**

1. Accused were convicted on their own plea for the offence of being in possession of wildlife trophy (3 Pieces of elephant tusks) contrary to section 95 of the **Wildlife Conservation and Management Act 2013 (the Act)**.
2. Each Appellants was fined Kshs. 1,000,000/- in default 5 years' imprisonment.
3. Appellants appeal on sentence is opposed by the state on the ground that it is legal.

**Analysis and Determination**

4. Section 348 of the Criminal Procedure Code provides that

**No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.**

5. Section 95 of the Act under which Appellants were charged provides that:

**Any person who keeps or is found in Possession of a wildlife trophy or deals in a wildlife trophy, or manufactures any item from a trophy without a permit issued under this Act or exempted in accordance with any other provision of this Act, commits an offence and shall be liable upon conviction to a fine of not less than one million shillings or imprisonment for a term of not less than five years or to both such imprisonment and fine.**

6. There is no illegality in the sentences imposed on the Appellants to warrant any interference by this court.

7. The appeals are considered and found to have no merit and they are dismissed.

**DATED AT MERU THIS 15<sup>TH</sup> DAY JULY , 2021**

**T. W. CHERERE**

**JUDGE**

Court Assistant - **Mr. Kinoti**

1<sup>st</sup> Appellant - **Present**

2<sup>nd</sup> Appellant - **Present**

3<sup>rd</sup> Appellant - **Present**

For the State - **Ms. Mwaniki**