



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NANYUKI**

**CRIMINAL APPEAL NO 42 OF 2019**

**MOHAMMED HUSSEIN WARSAME.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(From original Conviction and Sentence in Nanyuki CM**

**Criminal Case No 158 of 2016 – Njeri Thuku, PM)**

**J U D G M E N T**

1. The Appellant, **MOHAMMED HUSSEIN WARSAME**, was convicted after trial of three offences as follows –

Count I: **Killing an animal with intent to steal** contrary to **sections 289 and 275** of the *Penal Code*.

Count II: **Hunting a protected animal** contrary to **sections**

**22(1) (a) and 56(1) (a)** of the *Wildlife (Conservation and Management) Act, Cap 376*.

Count III: **Hunting a game animal** contrary to **section 22(1) (b)** of the *Wildlife (Conservation and Management) Act, Cap 376*.

The three offences were alleged to have been committed on 29<sup>th</sup> and 30<sup>th</sup> June 2011 at Ol Pejeta Ranch within Laikipia County jointly with others not before court, and involved one rhinoceros and its two horns (Count I), another rhinoceros (Count II) and one buffalo (Count III).

2. On 10/09/2019 the Appellant was sentenced to 2 years, 7 years and 3 years imprisonment respectively on the three counts, the sentences to run consecutively – a cumulative sentence of 12 years imprisonment. He has appealed against both conviction and sentence. Learned counsel for the Respondent does not support the convictions.

3. I have read through the record of the trial court in order to evaluate the evidence tendered and arrive at my own conclusions regarding the same. This is my duty as the first appellate court. I have borne in mind however, that I neither heard nor saw the witnesses as they testified, and I have given due allowance for this fact.

4. The only evidence connecting the Appellant to the offence was an electronic receipt generated by the computers of a *Nakumatt Supermarkets* outlet at Meru which bore his name and his smartcard number. This receipt was found at the scene of the crimes. On the face of it this receipt was powerful circumstantial evidence of the Appellant's presence at the scene of crime, unless he offered a plausible explanation for his receipt being found there.

5. Now, there are stringent conditions that govern the admissibility of electronic records in legal criminal proceedings. These conditions are set out at some length in **section 106B** of the *Evidence Act, Cap 80*. One of those conditions is a certificate issued under **subsection (4)** of that section. Unfortunately in this case, there was no such certificate produced in evidence along with the electronic receipt. That receipt therefore did not meet the requisite legal threshold for its admission in evidence, and should not have been relied upon to convict the Appellant. Learned counsel for the Respondent therefore properly conceded the appeal.

6. I will in the event allow the appeal in its entirety, quash the convictions and set aside the sentences imposed. The Appellant shall be set at liberty forthwith unless otherwise lawfully held. It is so ordered.

**DATED AND SIGNED AT NANYUKI THIS 30<sup>TH</sup> DAY OF JUNE 2021**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 1<sup>ST</sup> DAY OF JULY 2021**