

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIVASHA

MISCELLANEOUS CRIMINAL APPLICATION NO. E094 OF 2021

BEDFORD NJERU KAMIRI.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. The Applicant herein was the 1st Accused in Engineer PM's Court Criminal Case No. 1094 of 2018 where they were jointly charged with being in possession of Wildlife Trophy contrary to **Section 95** of the **Wildlife Conservation and Management Act, 2013**. The particulars of the charge were that on the 2nd day of September, 2018 at Njabini town within Nyandarua County were jointly found in possession of nine (9) pieces of elephant tusks weighing 23 Kg with a street value of Kshs 2.3 million without a permit from the Director of Kenya Wildlife Service.

2. At the conclusion of the trial, all the three accused persons were found guilty as charged. They were each sentenced to pay a fine of Kshs 800,000/= in default serve 2 years imprisonment. The sentence was passed on 1st March, 2021.

3. The Applicant herein did not prefer an appeal against both the conviction and sentence. Instead, he filed this instant application vide a Chamber Summons filed on 13th April, 2021 in which he asks the court to revise the sentence by substituting it with probation.

4. The application was canvassed before me on 4th November, 2021. The Applicant was in person whilst the Respondent was represented by learned State Counsel, Ms. Maingi. The Applicant submitted on only one issue, that the court should take into account the period he spent in remand custody before the sentence was passed to which Ms. Maingi had no objection.

5. I have considered the record. It is notable from the charge sheet that the Applicant was arrested on 2nd September, 2018 and was released on bond on 31st October, 2018. He thus was in remand custody for one (1) month and 29 days. Since it is apparent that he is unable to meet the fine imposed, the law provides that the court should take into account the period he had spent in remand custody before the sentence was passed. In the circumstance, I hereby order that the period of one (1) month and 29 days should be deducted from his sentence, any remission credited notwithstanding. It is so ordered.

DATED AND DELIVERED AT NAIVASHA THIS 11TH DAY OF NOVEMBER, 2021

G. W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Bedford Njeru Kamiri - Applicant in person

2. Ms. Maingi for the Respondent