

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

CRIMINAL APPEAL NO 112 OF 2017

SAMI LESILELE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from original Sentence dated 02/10/2017 in Nanyuki CM Criminal Case No 1611 of 2017 – E Ngigi, SRM)

J U D G M E N T

1. The Appellant herein, **SAMI LESILELE**, was convicted upon his own plea of two offences under the *Wildlife Conservation and Management Act, 2013*. The first count was *trespass upon a national reserve* contrary to **section 102(1) (a)** of the Act. For this offence he was sentenced to a fine of KShs 200,000/00 and in default of payment to serve two (2) years imprisonment.

2. The offence in the second count was *illegal grazing in a national reserve* contrary to **section 102(2) & (3)** of the Act for which he was sentenced to a fine of KShs 50,000/00 and in default of payment to serve three (3) months imprisonment. The default sentences would of course run consecutively in light of the *proviso* to **section 37** of the *Penal Code*.

3. The Appellant appealed only against the default sentence in count one. He was sentenced by the trial court on 02/10/2017. When this court heard his appeal he had been in prison for one (1) year and nearly five (5) months serving sentence. I immediately partially allowed his appeal against sentence by setting aside the default sentence in count one and substituting therefore 12 months imprisonment. That meant that the Appellant had already served the default sentences in both counts, and I directed that he be set at liberty forthwith unless otherwise lawfully held. I will now give the reason for partially allowing the appeal against sentence.

4. Under **section 28(2)** of the *Penal Code*, a fine exceeding KShs 50,000/00 should not attract a default term of imprisonment exceeding 12 months. The default term of imprisonment of two (2) years imposed upon the Appellant in count one was thus unlawful. That is why I set it aside and substituted therefore 12 months imprisonment.

DATED AND SIGNED AT NANYUKI THIS 29TH DAY OF SEPTEMBER 2020

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 8TH DAY OF OCTOBER 2020