



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAROK**

**CRIMINAL APPEAL NO. 4A AND 4B OF 2018**

**METIAN OLE RAKATIAN.....1<sup>ST</sup> APPELLANT**

**MOGE OLE MALIT.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**REPUBLIC**

**(Being an appeal from the judgement, conviction and sentence of Hon. H. Ng'ang'a, SRM, delivered on 9<sup>th</sup> February 2013 in the Chief Magistrate's Court at Narok in Criminal Case No. 73 of 2106, R v. 1. Moge Ole Malit 2. Metian Ole Rakatia)**

**JUDGEMENT**

1. The appellants have appealed against their sentence of Kshs. 1,000, 000/= in default to serve five years' imprisonment in respect of the offence of possession of Government trophies namely two pieces of elephant tusks contrary to section 95 as read with section 92 and section 105 (1) (a) of the Wildlife Conservation and Management Act of 2013.

**Appeal of the 1<sup>st</sup> appellant-Metian Ole Rakatian**

2. In his amended grounds of appeal, the 1<sup>st</sup> appellant has faulted the trial court for imposing a manifestly harsh sentence. Grounds 2, 4 and 5 are mitigating factors and I will consider them together. His mitigation was as follows. He was a first offender, repentant, remorseful, a family man with three school going children, epileptic, and has an old sickly mother; all of whom depend upon him.

3. In ground 3 the appellant has faulted the trial court for failing to consider that he had been in custody.

4. In sentencing the appellant, the court took into account his mitigation that he was an orphan and was feeling sick. The court also took into account that he was remorseful and was a first offender. The court then sentenced him to the minimum mandatory sentence of a fine of Kshs 1000,000/= in default to serve five years' imprisonment.

5. In view of the decision in *Francis Karioko Muruatetu & Another v R [2017] eKLR* this court is bound to impose a minimum mandatory sentence. I have also taken into account that the appellant has been in custody since 28<sup>th</sup> November 2016, which translates to about three years, which was not considered by the trial court.

6. I find that the offence is a threat to wildlife tourism in this country and is very serious.

7. After considering all these matters, I hereby reduce the sentence to a fine of Kshs. 220,000/= in default to serve fifteen months (15) months imprisonment.

**Appeal of 2<sup>nd</sup> appellant-Moge Ole Malit**

8. This appellant has raised the same grounds of appeal like the 1<sup>st</sup> appellant; except that he is not an orphan.

9. I hereby reduce the sentence to a fine of Kshs. 220,000/= in default to serve fifteen months (15) months imprisonment.

Judgement signed, dated and delivered in open court at Narok this 6<sup>th</sup> day of November, 2019 in the presence of both the appellants and Mr. Omwega for the state.

**J. M. Bwonwong'a**

**Judge**

**6/11/2019**