



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO 76 OF 2017

LONGIDA LONKINYANGAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from original Sentence dated 27/01/2016 in Nanyuki CM Criminal Case No 863 of 2014– W J Gichimu, PM)

J U D G M E N T

1. The Appellant herein, **LONGIDA LONKINYANG** (who was accused 2 before the trial court) was charged with ***being in unlawful possession of wildlife trophy*** contrary to **section 95** of the ***Wildlife Conservation and Management Act, 2013*** (the Act). It was alleged that on 20/09/2014 in Mukogodo Division within Laikipia–North Sub-County of Laikipia County, jointly with his co-accused and others not before court, he was found in unlawful possession of 2 elephant tusks weighing 3 kg valued at KShs 1 million, the property of the Government of Kenya. After trial he was convicted of the greater offence under **section 92** of the said Act. This was without amendment to the charge. He was on 27/01/2016 sentenced as follows -

“Accused 2 to pay a fine of KShs 20 million, in default to serve 15 years imprisonment.”

The Appellant has appealed only against the sentence, particularly the default term of imprisonment of 15 years imprisonment.

2. Section 92 of the act provides as follows:-

“92. Any person who commits an offence in respect of an endangered or threatened species or in respect of any trophy of that endangered or threatened species shall be liable upon conviction to a fine of not less than twenty million shillings or imprisonment for life or to both such fine and imprisonment.”

A trial court therefore has three options in sentencing a convicted accused under this section –

- i) It may fine him not less than KShs 20 million; **OR**
- ii) It may imprison him for life; **OR**
- iii) It may both fine and imprison him.

3. The trial court in the present case chose the first option. It fined the Appellant KShs 20 million and imposed a term of imprisonment of 15 years **in default** of paying the fine. The court did not **both** fine and imprison the Appellant. It merely imposed a term of imprisonment of 15 years in the event that the Appellant did not pay the pay.

4. However, the trial court erred in disregarding the provisions of **section 28(2)** of the ***Penal Code*** regarding terms of imprisonment in default of payment of fines. For the fine of KShs 20 million, the term of imprisonment in default of payment should have been twelve (12) months. The term of fifteen (15) years imprisonment in default of payment of the fine was patently illegal. It cannot be allowed to stand.

5. In the event I will partially allow the Appellant’s appeal against the sentence by setting aside the default sentence of fifteen (15) years and substituting therefore a term of imprisonment of twelve (12) months in default of payment of the fine.

6. The Appellant has long served that default sentence of twelve (12) months imprisonment. He shall therefore be set at liberty forthwith unless otherwise lawfully held. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 4TH DAY OF DECEMBER 2019

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 5TH DAY OF DECEMBER 2019