



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CORAM: D.S MAJANJA J.

CRIMINAL APPEAL NO. 113 OF 2018

BETWEEN

RUTH KWAMBOKA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. M. Munyendo – RM dated 23rd March 2015 at the Principal Magistrate’s Court at Kilgoris in Criminal Case No. 635 of 2013)

JUDGMENT

The appellant RUTH KWAMBOKA was charged with various offences as follows:

Count 1: Unlawfully being in possession of ivory contrary to section 42(1) (b) of the Wildlife Conservation and Management Act Cap. 376 Laws of Kenya.

On the 11th day of August 2013 at Nkararo area in Transmara West District within Narok County were unlawfully in possession of ivories (5) pieces with a street value of Kshs. 3,000,000/= (three million shillings) without a certificate of ownership thereof.

Count 2: Unlawfully dealing in trophy contrary to section 39(3) (b) of the Wildlife Conservation and Management Act Cap. 376 Laws of Kenya.

On the 11th day of August 2013 at Nkararo area in Transmara West District within Narok County was found unlawfully dealing in trophies namely five (5) pieces ivories with a street value of Kshs. 3,000,000/= (three million shillings) without a dealer license.

Count 3: Failing to make a report contrary to section 39(3)(a) of the Wildlife Conservation and Management Act Cap 376 Laws of Kenya.

On the 11th day of August 2013 at Nkara area in Transmara West District within Narok County failed to make a report of obtaining possession of Government trophies namely five (5) ivories of a street value of Kshs. 3,000,000/= (three million shillings) to an authorized officer.

2. Although the appeal is against conviction and sentence, the appellant only wishes to contest the sentence and at the hearing withdrew the contents on the conviction. The sentence read by the trial court was as follows:

“I have considered the offence in question, mitigation as presented by the two accused persons and the fact that they are both 1st offenders. The offences in question are very serious, nothing that the genesis of such cases is on the fact that elephants had to be killed to extract the ivory. Poaching has been declared a national disaster as results thereof is that our country is depleted of its treasured wildlife. As such a deterrent sentence will be meted out on accused persons to bar other members of public from committing the same. I therefore proceed and sentence each of the accused person on count 1 of being in possession of government ivory without a certificate of ownership contrary to section 42(1)(b) to three years imprisonment. For count 2 of unlawfully dealing in trophy contrary to section 39(3)(b) of Cap 376 to six months. For count 3 of failing to make a report contrary to section 39(3)(a) of Cap 376 to six months imprisonment. All sentences to run concurrently.”

3. Since the appellant has almost completed the sentences which were stated to run concurrently and she had withdrawn the appeal on

conviction, I therefore affirm the sentence but direct that remainder of the term be served under Community Service. She is ordered released unless otherwise lawfully held.

Dated and delivered at Kisii this 13th day of December 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.

Mr. Koina Onyancha for the appellant.