



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**CRIMINAL APPEAL NO. 106 OF 2016**

**GEOFREY KING'ASIA.....1ST APPELLANT**

**MARTIN MARANGO.....2ND APPELLANT**

**VERSUS**

**REPUBLIC.....PROSECUTOR**

**(Being an appeal arising from conviction and sentence of G.N. Sitati Resident Magistrate delivered on 9/11/16 in Criminal Case No. 4514 of 2016)**

**JUDGMENT**

The appellants were charged with the offence of **Illegal entry into the national park without a permit contrary to Section 102(1) (a) of the Wildlife and conservation Management Act 2013**. The particulars of the offence were that on the **27<sup>th</sup> day of October 2016 at Mount Elgon National Park within Trans Nzoia County jointly illegally entered into the said National Park without a Licence or permit from Kenya Wildlife Services**.

The second count was **Removing Forest Produce contrary to Section 52i) (a) as read with Section 52(2) of the Forest Act No. 7 of 2005**. The particulars were that on the **27<sup>th</sup> day of October 2016 at Mount Elgon National Park within Trans Nzoia County jointly were found removing forest produce to wit 2 logs of Cypress tree without a valid permit from the Director of Forest Services valued at Kshs 1000/-**.

Both appellants admitted the charge and were sentenced accordingly. They then filed this appeal citing two grounds namely: that the plea was unequivocal and to the required standard and that the sentence was improper and unwarranted.

Advocate Arunga counsel for the appellants when the matter came up for hearing submitted that the probation report was unfair on the appellants as it concluded that they were flight risk. She argued that the plea was equivocal as the charge as read to the appellants was never explained to them. In short they did not understand the charges and the consequences facing them.

Mr Kakoi the learned state counsel opposed the appeal arguing that the sentence passed against the appellant was the minimum in the circumstances. He said that the probation report was purely a social inquiry and that under the provisions of Section 207 of the Criminal Procedure Code there was no provision of explaining the charge to the appellants. He however conceded that there was no clear language which the Court used and that he was not averse to a retrial.

I have perused the entire proceedings at the lower court and having heard the counsel for the parties herein it is clear that the language used by the court was Swahili. The answer when the charges were read to the accused was equally Swahili. Thereafter the facts were read to them and they responded in Swahili.

**“Maelezo ni ya kweli.”** translated in English as

“the facts are true.”

I am therefore unable to appreciate the contention that the plea was not clear for the appellants. I find this was an afterthought.

Similarly , the probation report was purely a social inquiry report. The same need not have influenced the sentencing of the appellants. In any case I do not find that the trial court acted excessively. The sentence passed were the minimum in the circumstances. Even if the court was to consider the report, it is clear that both of them have no fixed place of abode and they misled the probations officer in respect to their residence.

Consequently I do not find this appeal meritorious. Neither do I find the suggestion by the learned state counsel for retrial plausible. There was no ambiguity as to the charge and the language used. If the appellants had experience language issue there was no reason why they readily admitted when the facts were read.

The appeal is therefore dismissed and the bond earlier issued in their favour cancelled.

Delivered this 9<sup>th</sup> day of March 2017.

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**H.K. CHEMITEI**

**JUDGE**

**In the presence of;**

**M/S Kakoi for Respondent**

**Appellant – present**

**Kirong - Court Assistant**