



**REPUBLIC OF KENYA**

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

**CRIMINAL REVISION 37 OF 2017**

**GEOFFREY SAMMY NJOGU.....APPLICANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**RULING**

The application herein is for revision of the sentence imposed on the Applicant. He was charged with the offence of being in possession of wildlife trophy contrary to **Section 95** as read with **Section 105 of the Wildlife Conservation and Management Act, 2013**. The particulars are that on the 4<sup>th</sup> of June, 2014 at 1300 hours at Kabuku Area in Limuru within Kiambu County, was found in possession of wildlife trophies namely two pieces of elephant tusks weighing 18 kilograms valued at Ksh1,800,000 on board a motorcycle registration number KMDC 746U without a permit. He was also charged with dealing in wildlife trophy contrary to **Section 84 (1)** as read with **Section 92 and Section 105 of the Wildlife Conservation and Management Act, 2013**. The particulars are that on the 4<sup>th</sup> of June, 2014 at Kabuku Area in Limuru within Kiambu County, was found dealing in wildlife trophies namely two pieces of elephant tusks weighing 18kgs valued at Ksh 1,800,000 on board a motorcycle registration number KMDC 746U without a permit.

He was convicted in count I and acquitted in count II. He was sentenced to pay a fine of Ksh 1,000,000 and in default serve 5 years' imprisonment.

The lower court file in Kibera Criminal Case No. 242 of 2017 was forwarded to this court pursuant to Section 362 of the Criminal Procedure Code with a view to this court reducing his sentence. In his application, he requests the court to give him a non-custodial sentence. He also asks the court to consider that he has been in custody since he was first arraigned in court on the 4<sup>th</sup> of June, 2014. He submits that he has children who wholly depended on him before his incarceration.

The learned State Counsel, M/s Atina partially conceded to the application on account that the period that the Applicant has been in custody should be taken into account when tabulating the sentence. She however urged the court not to reduce the sentence as the Applicant was given the minimum provided by the law after the court took into account his mitigation.

The Applicant was charged under **Section 95 of the Wildlife Conservation and Management Act of 2013** which provides thus;

***“Any person who keeps or is found in possession of a wildlife trophy or deals in a wildlife trophy, or manufactures any item from a trophy without a permit issued under this act or exempted in accordance with any other provision of this act, commits an offence and shall be liable upon conviction to a fine of not less than one million shillings or imprisonment for a term of not less than five years or to both such imprisonment and fine.”***

The sentence imposed was thus, not only legal but the minimum provided by the law. It was the testimony of PW1 as well as PW3 that they posed as potential buyers of ivory and they apprehended the Applicant as he delivered two ivory tusks to them. It is clear that the Applicant was indeed in possession of the tusks as the witnesses were lying in wait to nab him. He knew that the dealing in the trade is prohibited and he was therefore committing a crime. The Applicant has been in custody for a period of 2

years 11 months since he was charged. However, it is also evident that the menace of poaching and killing of elephants has become rampant and the law set in place should curb the same. In view thereof, I find no basis of revising the sentence downwards. The application is therefore dismissed. However, if the Applicant is unable to pay the fine, the period served in custody shall be taken into consideration when tabulating the custodial sentence. Thus, he shall serve less the period served in custody.

**DATED AND DELIVERED THIS 11<sup>TH</sup> DAY OF MAY, 2017**

**G.W. NGENYE-MACHARIA**

**JUDGE**

**In the presence of;**

1. *Applicant in person.*
2. *M/s Sigei for the Respondent.*