



**REPUBLIC OF KENYA**

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

**CRIMINAL REVISION NO. 89 OF 2017**

**MUNYA KAISO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING ON REVISION**

1. **Munya Kaiso** “the Applicant”, was together with two (2) others charged before the Maua Chief Magistrates Court on 19<sup>th</sup> January, 2015 with three (3) counts under the Wildlife and Conservation Management Act as follows:-

*(a) Count 1 - “Being in Possession of game meat contrary to Section 98 of the Wildlife Conservation and Management Act, 2013 under Legal Notice No. 47 Laws of Kenya”.*

*(b) Count 2 - “Entering a National Park contrary to Section 102 (1) (a) of the Wildlife Conservation and Management Act, 2013 under Legal Notice No. 47 Laws of Kenya”.*

*(c) Count 3 - “Conveys into a National Park with hunting tools contrary to Section 102 (1) (f) of the Wildlife Conservation and Management Act, 2013 under Legal Notice No. 47 Laws of Kenya”.*

2. The Applicant together with his Co-Accused pleaded guilty to the charges and were convicted and sentenced to a total fine of KShs.430,000/= or four and a half (4½) years imprisonment. On 11<sup>th</sup> April, 2017, the Applicant applied under Section 362 and 364 of the Criminal Procedure Code (hereinafter “the Code”) respectively, seeking that the sentence be reviewed.

3. The grounds upon which the application was grounded upon were that the Applicant is a sole breadwinner of his family; that he is of advanced age and may not survive the custodial sentence; that he was a first offender and he promised not to engage in criminal activities. He prayed for a review of his sentence and for a non-custodial sentence.

4. The jurisdiction for review or revision is donated by Section 362 of the Code. That Section provides:-

***“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”***

5. It is clear from this Section that the powers of this Court for revision is for it to call for the lower Court record and satisfy itself as to the correctness, legality or propriety of any finding, sentence or order passed or the regularity of the proceedings before the subordinate Court. I have considered the entire record of the trial Court. The plea seems to have been properly administered in a language the Applicant understood. He pleaded guilty to all the charges. The Applicant was given a chance to mitigate which he did and was considered. He never raised in his mitigation the issues he is currently raising.

6. However, looking at the charges, Count III does not seem to be proper. The particulars of the charge do not support the charge. The charge reads:-

***“CHARGE III***

***Conveys into a National Park with hunting tools contrary to Section 102 (1) (f) of the Wildlife Conservation and Management Act, 2013 under Legal Notice No. 47 Laws of Kenya”.***

The particulars of the charge were that:-

**“1. ZACHARIA NJERU, 2. MUNYA KAISO. On the 18<sup>th</sup> day of January, 2015 at around 13:30 hours at Kyollu area in Meru National Park within Meru County entered the said National Park without authorization.”**

7. Section 102 (1) (f) under which Count III was drawn creates two (2) offences. These are conveying into a protected area (National Park) weapons or being found in possession of weapons specified therein within a protected area. Those are two separate and distinct offences and one cannot be charged with both under the same charge or count. In the case of Peter Ngure Mwangi v Republic (2014) Eklr, the Court of Appeal held:-

***“On the issue of a defective charge sheet, there are two limbs to it. The first one deals with the issue as to whether the charge sheet is indeed defective, whereas the second one deals with the issue as to whether even if a charge sheet is defective, that defect is curable or not. This Court considered the ingredients necessary in a charge sheet and stated as follows in the case of Isaac Omambia v Republic, (1995) eKLR:***

***“In this regard, it is pertinent to draw attention to the following provisions of Section 134 of the Criminal Procedure Code which makes particulars of a charge an integral part of the charge: Every charge or information shall contain, and shall be sufficient if it contains a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence.”***

***A charge can also be defective if it is in variance with the evidence adduced in its support.”***

8. In the present case, the charge is bad on the face of it. It does not disclose what the Applicant conveyed into the Park. On the other hand, the particulars talk of the Applicant being found in possession of weapons within the Park. That is a different charge from that of conveying. In my view, that charge was defective and it does not matter that the Applicant pleaded guilty to it. To that extent, the conviction on that count cannot stand. The same is quashed and the sentence of 2 years set aside.

9. What the Applicant complains of is the sentence passed against him. He contends that the same was harsh. In the 1<sup>st</sup> Count, the Applicant was charged with the offence of being in possession of game meat under Section 98. The minimum sentence provided for that offence is KShs.200,000/= or imprisonment for one year. The Applicant is lucky that he was sentenced to a fine of KShs.30,000/= in default 6 months imprisonment. On Count II, the Applicant was charged with entering a National Park without authorization therein contrary to Section 102 (1) (a) of the Wildlife Conservation and Management Act. The minimum sentence for the said offence is a fine of not less than KShs.200,000/= or imprisonment for two (2) years or to both. The trial Court sentenced the Applicant to the minimum sentence. The sentence was not excessive in the circumstances.

10. In view of the foregoing, I do not find any irregularity on the proceedings or the sentence passed in respect of Counts I and II. The Applicant’s application therefore lacks merit on those two counts. However, since the Applicant has succeeded on Count III and the conviction thereon quashed and the sentence of two years set aside, that period is to be deducted from the total sentence of four and a half (4½) years that he was sentenced and is to be set free once he serves the period of two and a half (2½) years in respect of Counts 1 and II. This order be extracted and be served upon the Prisons Department.

It is so ordered.

**DATED and DELIVERED at MERU this 12<sup>TH</sup> day of JUNE, 2017.**

**A. MABEYA**

**JUDGE**

**12/06/2017**

**PRESENT**

Bonface, Court Assistant

Applicant, Present

Mr. Mungai for State