



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

CRIMINAL APPEAL NO. E 044 OF 2024

AMBROSE WAMBUA..... APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

(From the original conviction and sentence in Criminal case NO.782 of 2021 of the Senior Principal Magistrate’s Court at Makindu by Hon. M. Kibe–Senior Resident Magistrate)

JUDGMENT

1. Ambrose Wambua, the appellant herein, was convicted after pleading guilty to the offence of being in possession of endangered wildlife species contrary to section 92 (4) of the Wildlife Conservation and Management Act 2013 and the offence of entering the National Park contrary to section 102 (1) (a) of the Wildlife Conservation and Management Act 2013.
2. The appellant was sentenced to five years’ imprisonment in count one and one month’ imprisonment in count two. He was aggrieved and filed this appeal against the sentence.
3. The appellant raised grounds of appeal as follows:
 - a) That the learned trial magistrate erred in law and fact when she sentenced the appellant without considering his mitigation.
 - b) The appellant is the sole breadwinner for his family of four children.
 - c) The learned magistrate failed to consider that the appellant is a first offender and hence eligible for a more lenient sentence.

4. The state opposed the appeal through M/s. Omollo Vera, learned counsel.
5. This is a first appellate court. As expected, I have analysed and evaluated afresh all the evidence adduced before the lower court, and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **Okeno vs Republic [1972] EA 32**.
6. An appellate court would interfere with the sentence of the trial court only where there exists, to a sufficient extent, circumstances entitling it to vary the order of the trial court. These circumstances were well illustrated in the case of **Nillson vs. Republic [1970] E.A. 599**, as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in JAMES Vs. REX (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R Vs. SHERSHEWSITY (1912) C.CA 28 T.LR 364.

7. Section 92 (4) does not exist in the Wildlife Conservation and Management Act 2013. The charging of the appellant under a non-existent section was prejudicial to him, for the court could not be in a position to tell the proper sentence if indeed the sandalwood has been declared endangered. Reading section 92 of the Wildlife Conservation and Management Act 2013, one cannot tell if sandalwood has been declared endangered. I therefore quash the conviction and set aside the sentence in count one.

8. Section 102 (1) ,2 & 3 of the Wildlife Conservation and Management Act 2013 provide:

Any person who—

(a) enters or resides in a national park or reserve otherwise than under licence, permit or in the course of his duty as authorized officer or a person lawfully employed in the park or reserve, as the case may be;

(2) No person shall enter into a national park with any livestock for any purpose without authorization.

(3) Any person who contravenes subsection (2) commits an offence and is liable upon conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months.

9. The sentence in count two cannot be said to be harsh. I will not interfere with it.

10. Since the sentence in count two has already been served, the appellant is ordered released forthwith.

Delivered and signed at Makueni, this 21st day of October 2025

KIARIE WAWERU KIARIE

JUDGE