



**Republic v Nguyen & another (Criminal Case E074 of 2025)
[2025] KEMC 85 (KLR) (7 May 2025) (Sentence)**

Neutral citation: [2025] KEMC 85 (KLR)

**REPUBLIC OF KENYA
IN THE JKIA LAW COURTS
CRIMINAL CASE E074 OF 2025
AN THUKU, SPM
MAY 7, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

DUH HUNG NGUYEN 1ST ACCUSED

DENNIS NGANGA 2ND ACCUSED

SENTENCE

1. Imagine being violently removed from your home and packed into a container with many others like you. Then imagine being isolated and squeezed into a tiny space where the only source of nourishment for the foreseeable future is glucose water. In this tiny space you will be transported thousands of miles away from your home to a foreign land. There you will wait until you are bought and placed with an owner who will give you a new home.
2. It almost sounds as if the reference above is to slave trade. Yet, it is not slave trade, but it is illegal wildlife trade. This is the context of the sentencing in this case.
3. Duh Heng Nguyen (“Duh”) and Dennis Nganga (“Dennis”) are charged with dealing in live wildlife species contrary to section 95(c) of the *Wildlife Conservation and Management Act*, Cap 376 of the Laws of Kenya.
4. The particulars of the offence are that on April 5, 2025 between 2300 hours and 0200 hours at Nairobi Town – Central Business District (CBD), Hemak Towers, Hemak Suites and Syokimau Tofina Muthama apartments, within Nairobi and Machakos County with others not before court were found while dealing in live wildlife species namely garden ants (messor cephalotes) packaged in 140 syringes and approximately 300 unpackaged garden ants in two containers which have a street value of Kshs 200,000 without a permit.



5. Duh and Dennis were arraigned in court on April 14, 2025 when they pleaded guilty to the offence. Mr. Opiyo represented Duh while Mr. Lusweti represented Dennis. Mr. Mulama and Ms. Rono appeared for the State and prosecuted this matter. After conviction Mr. Mulama informed the court that the State did not have any previous records on the accused but asked for Pre- Sentence Reports. I thank the Probation Office for the Pre-Sentence Reports. The complainant in this case is Kenya Wildlife Service (KWS) and they presented a Victim Impact Statement. Normally it is the Probation Office that prepares Victim Impact Statements. However, given that KWS is in a better place to present the views as an expert in illegal wildlife trade, and given it may want to amplify its voice on this novel issue, the court accepted the statement. Both the Pre-Sentence Reports and the Victim Impact Statement were shared with Mr. Opiyo and Mr. Lusweti.
6. The rest of the sentencing proceeds with the position in law, the mitigation presented by defence counsel, a summary of the Pre-Sentence Reports, critical factors the court has considered, a snap shot of the Sentencing Guidelines and finally the sentencing.

Law

7. Duh and Denis are charged under section 95(c) of the [Wildlife Conservation and Management Act](#) which states:
 95. Offences relating to trophies and trophy dealing
Any person who, without a permit or exemption granted under this Act in relation to a species not specified under section 92—
 - a. kills or injures, tortures or molests, or attempts to kill or injure, any wildlife species;
 - b. deals in a wildlife trophy;
 - c. deals in a live wildlife species;
 - d. is in possession of a wildlife trophy or live wildlife species; or
 - e. manufactures an item from a wildlife trophy,commits an offence and shall be liable on conviction to a fine of not less than one million shillings or a term of imprisonment of not less than twelve months or to both such fine and imprisonment.

Mitigation and Pre-Sentence Reports.

8. Mr. Mulama informed the court they did not have any previous records but asked for Pre-Sentence Reports. In mitigation for Duh, Mr. Opiyo stated that Duh was ignorant that his actions were against the law, though he was quick to add that ignorance is not a defence. He said Duh is a computer science student and the first born in his home. Duh's father has cancer and he co-operated with the police from the time he was arrested. Mr. Opiyo asked the court to give Duh a non-custodial sentence. He concluded that Duh is remorseful and has been crying since he was detained by the police. Duh sobbed as he told the court that he was sorry for breaking the law. He said his father has cancer and he dropped out of university where he was studying computer science to take care of his father.
9. Mr. Lusweti is representing Dennis on a pro bono basis as appointed by the court. The court thanks him for his service to his client. Mr. Lusweti informed the court that Dennis is remorseful and suffers from low blood sugar. He said Dennis was ignorant that he was committing an offence by handling the ants. He also asked the court to grant Dennis a non-custodial sentence. Dennis told the court that he had many issues but his primary one concern was his health status.



10. I have read the Pre-Sentence Reports and I thank the respective Probation Officers for presenting detailed reports. They are summarized as follows. Duh is 23 years old and the first born in his family. He is what is known in the drug trafficking world as a mule or courier. A definition of a drug mule as proposed by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) is that a drug courier is a person “who is paid, coerced or tricked into transporting drugs across an international border but who has no further commercial interest in the drugs”. The narration given by Duh has all the tell-tale signs of organized crime.
11. By his own admission Duh was sent to pick up the ants and the person who sent him paid for his ticket. He was also given the contact details of the person that would give him the ants and that is how he met Dennis. Duh did not know that what he came to do was against the law. The Pre-Sentence Report confirms that Duh’s father has cancer and this was confirmed by the Probation Officer who spoke to his family members. The recommendation by the Probation Officer is for a non-custodial sentence of a fine.
12. According to the Pre-Sentence Report, Dennis is 26 years old and also the first born in his family. He has a history of low blood sugar that was diagnosed in 2023. The report states that Dennis accompanied Duh to Naivasha to pick up the ants. He acted as a broker due to his knowledge of the ants that are found in his rural home. The report states that Dennis was ignorant that he was committing a crime because ants are many and they are sold and eaten locally.

Victim Impact Statement.

13. I have read the Victim Impact Statement prepared by an officer from Kenya Wildlife Service. It refers to increasing seizures of insects from 2019 without giving the data. How many seizures have occurred each year? What kinds of creatures are being transported? What was the destination? Were there any prosecutions? Has KWS secured convictions? Are there efforts to sensitize the communities living where the insects come from? The statement notes the seizures involve garden ants and praying mantis.
14. The statement makes reference to the fact that the live species in this case were packed in a way to ensure their survival for the next two months. In summary, this the attraction to the ants whose scientific name is messor cephalates, that they are:
 - a. kept as exotic pets.
 - b. highly prized for their unique behaviour which according to the pet owners, is therapeutic to watch.
 - c. used for research and educational purposes.
 - d. a source of research due to their foraging strategies and social structure.
 - e. useful in teaching ecology the behaviour of ants and the importance of ants in the ecosystem,
 - f. provide helpful insights into biodiversity and the ecosystem.

The statement concludes that the specific use of messor cephalates is not well documented. According to the report, an ant retails for between 60 to 100 euro. An ant colony can have up to 10,000 ants and in households they are kept in a formicarium.

15. Attached to the Victim Impact Statement is the report from the National Museums of Kenya dated April 22, 2025 by L. Njoroge an Entomologist and Research Scientist in the Invertebrates Zoology Section of the National Museums of Kenya.



16. In terms of the negative effects of mass harvesting and transfer of ants, these include:
 - a. The extinction of the local species. The report from the National Museums of Kenya states that it is possible for *Messor cephalotes* and *M. angularis* to become extinct because they have “a very restricted distribution range” and are only known in East Africa.
 - b. A proliferation of “harmful species such as crop pests due to a lack of predation.”
 - c. A disruption in “the process of nutrient recycling and potentially affecting nutrient availability for plants.” This leads to nutrient poor soils and poorly aerated soils.
 - d. The introduction of invasive species in areas where they are not naturally found.

Critical Factors.

17. This section considers critical factors that have come to the fore because of this case. To put this context, human beings have been trafficking insects for centuries.
18. The trafficking of insects today has historical roots, as seen in the 16th-century Spanish trade in cochineal insects. These parasites of nopal cacti produced a vivid red dye (carmines) used by the Aztecs, which amazed Spanish conquistadors. Spain capitalised on this, exporting the dye to Europe, where it was so valuable that it rivalled gold in price. Over 150,000 insects were needed to produce just 1 kg of dye, showing how small creatures could drive massive trade. The Spanish even kept their origin secret to maintain a monopoly. This example shows that insects have long held economic importance, just like today, where their rarity and value fuel both legal and illegal global demand.
19. Narrowing down to this case, garden ants are a diverse group of species commonly found in various environments, each exhibiting unique behaviours and ecological roles. The *Messor cephalotes*, commonly known as the Giant African Harvester Ant, is one of the largest and most distinctive ant species in the world. This species is renowned for its impressive size and complex social structure thriving in arid and semi-arid regions, constructing deep underground nests in sandy soils.

What drives the demand for garden ants?

The global market for ants, particularly as exotic pets, has experienced significant growth, driven by increasing interest in entomology, educational purposes, and the appeal of unique and low-maintenance pets. In regions such as Europe, Asia, and parts of North America, ants are sold through specialized retailers and online platforms, with prices varying based on species and colony size. For example, queen ants of species like Giant African Harvester Ant (*Messor cephalotes*) which are native to East Africa, including regions of Kenya, Ethiopia and Tanzania, can be priced between \$130 and \$725, depending on the colony size and vendor. Starter kits featuring smaller species may range from \$25 to \$35, offering enthusiasts an accessible entry point into ant keeping.

20. One of the primary reasons individuals keep ants is for educational purposes. Ant farms, or ant nests, serve as living laboratories where enthusiasts can observe the complex social structures and behaviours of ant colonies. This setup allows for the study of tasks such as foraging, brood care, and colony expansion, providing insights into the natural world. Additionally, ant keeping offers therapeutic benefits. Just as some find solace in watching fish swim in an aquarium, observing the ordered chaos of ants going about their tasks can be oddly therapeutic. The simple act of watching these industrious insects can help relieve stress, promoting mental well-being. For some, ant keeping is a gateway into the scientific study of ants. By maintaining colonies, enthusiasts can develop a deeper understanding of ant behaviour and ecology. This hands-on experience can lead to a greater appreciation for biodiversity.



and the roles ants play in various ecosystems. These reasons are in the Victim Impact Statement and the report from the National Museums of Kenya.

Why should we care about ants?

21. It may seem odd to write extensively in a sentencing in what seems an open and shut case about ants. This case has attracted a lot of attention and for the lawyers and non-lawyers, they may have looked up the law, seen the penalty and already concluded what the court should do. But that would have meant missing a moment. A moment to speak up and spotlight an offence whose devastation is not immediately seen, but that affects the environment ecosystems and generations. Already the world has lost a number of species due in part to greed. It is time to stem this tide. This court will do what it can to protect in the words of the hymn writer, “all creatures great and small.” But back to the question, why should we care about ants?
22. As stated earlier, the reasons are found in the report from the National Museums of Kenya. But I wish to expound on these. If ants were to go extinct, the effects on ecosystems would be widespread and devastating. Ants are essential for maintaining healthy soil through their natural tunnelling behaviour, which aerates the ground, improves water infiltration, and facilitates plant root respiration. They also contribute to the decomposition of organic matter, helping to recycle nutrients and maintain soil fertility. Without ants, soil quality would significantly decline, negatively impacting both natural vegetation and agricultural productivity.
23. In addition to their role in soil health, ants are natural pest controllers. Many ant species feed on other insects that are considered agricultural pests. If ants vanished, these pest populations would likely increase unchecked, leading to greater damage to crops and an increased need for chemical pesticides, which could further harm ecosystems. Ants also play a vital role in many food chains. They serve as a food source for birds, amphibians, reptiles, and small mammals. Their extinction would disrupt these food webs, potentially leading to population declines or the extinction of species that rely on them for sustenance.
24. Another important ecological service provided by ants is seed dispersal. Certain plant species have evolved to rely on ants to carry their seeds to nutrient-rich nesting areas, where the seeds are more likely to germinate. Without ants, this process known as myrmecochory, would be hindered, reducing plant reproduction and leading to a decline in biodiversity. Despite their abundance, ants are not immune to environmental threats. Habitat loss, illegal wildlife trade, pesticide use, and climate change are all contributing to the decline of ant populations. Because ants play such a foundational role in ecosystems, their extinction would cause a cascade of ecological consequences. Protecting them is essential for sustaining biodiversity and ensuring the stability of ecosystems around the world. This case touches on illegal wildlife trade and bio-piracy.

Illegal Wildlife Trade and Bio-Piracy

25. The real issue at stake in this case is illegal wildlife trade. Someone sent Duh with to collect garden ants. The ants were to be transported packed in syringes and indeed 140 ants were already in syringes. The remaining 300 had not yet been packed and possibly the job was not yet complete by the time the police arrested Duh and Dennis. The transportation of the ants was part of an elaborate scheme. By the time Duh arrived in Jomo Kenyatta International Airport, Nairobi he knew who he was to meet. Dennis was his contact person and though Duh did not mention it, they went to Naivasha together. This information is captured in Dennis’ Pre-Sentence Report. Dennis refers to himself as a broker and this implies that they met someone or some



people who were supplying the garden ants. These are all the hallmarks of illegal wildlife trade and possibly bio-piracy.

26. A publication by the Basel Institute on Governance authored by Saba Kassa, Jacopo Costa, Claudia Baez Camargo in 2019 titled, “Working Paper 30 – Corruption and wildlife trafficking: Exploring drivers, facilitators and networks behind illegal wildlife trade in East Africa” identified three main drivers of illegal wildlife trade. These are that trafficking engenders wealth and status, trafficking is a victimless crime and appropriating wildlife is moral.
27. On the aspect that trafficking is a victimless crime, the authors make this observation:
For many around the world, wild animals are viewed as sources of food or nuisances that destroy one’s livelihood and can pose a threat to personal security. This creates a general feeling of discontent among local people and fuels negative perceptions and attitudes towards wildlife (Abotsi et al., 2016)...
28. Traditionally the focus has been on big game where poachers seek big reward from mammals and birds that is ivory, rhino horn, animal skins and exotic birds. But increasingly there is now demand for invertebrates and the same principles apply.
29. Illegal wildlife trade of invertebrates is on the rise. It is also one of the largest underground markets earning between £5.2 and £6.6 billion, only second after drugs according to a write up by Nabieva E.S. and Miftakhova E.I. from Tyumen State University. There are many examples of these. For instance, in February 2025, US Customs and Border Protection officials at Los Angeles International Airport, seized a consignment of 37 live beetles hidden in packages of Japanese snacks, chocolates and potato chips. The shipment was sent from Japan by air cargo. On November 8, 2024 a 28-year-old man from South Korea was caught in at Jorge Chávez International Airport in Lima, Peru while trying to leave with 320 tarantulas, 110 centipedes and nine bullet ants strapped to his body. In 2009, Lee Arden, a 26-year-old man was arrested in Rio de Janeiro for trying to smuggle 900 tarantulas that were in his suitcase. He was on his way back to London and said he bought the spiders for £3 each with the aim of selling them for £30 each.
30. There is the additional aspect of bio piracy. Bio piracy refers to biological resource theft by researchers or research groups without approval from the government. This frequently occurs when researchers take traditional knowledge without consent or take advantage of the cultures they are studying. As the people who found or developed the resources do not receive a portion of the earnings, bio piracy is regarded as unethical or comparable to theft.
31. An example of bio piracy is the use of indigenous knowledge of medicinal plants, herbs for the patenting of pharmaceutical companies without understanding that information is neither new nor developed by the patentee, thereby depriving the indigenous people or community for their knowledge, a community of the right to commercial exploitation of the discovery and technology that they themselves have developed over time.
32. Biopiracy in Kenya has manifested in various forms, notably the uprooting and exportation of baobab trees from Kilifi County. These ancient trees, some of which are believed to be over a thousand years old, hold significant ecological and cultural value. In 2022, environmentalists raised alarms when it was discovered that a Georgian company had purchased and planned to export eight baobab trees from local farmers in Kilifi. The National Environment Management Authority (NEMA) and the Kenya Forest Service (KFS) intervened, citing the lack of proper authorization and environmental impact assessments. The uprooting of these trees not only threatened local ecosystems but also sparked



debates on the exploitation of Kenya's natural resources without adequate benefit-sharing mechanisms in place. The incident highlighted the need for stricter regulations and enforcement to prevent such acts of biopiracy.

Is there enough being done in Kenyan law to stop illegal wildlife trade and bio piracy?

33. Kenya is a signatory to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES currently regulates only a select number of insect species, such as certain butterflies and beetles, leaving many others unprotected. The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) has highlighted that insect trafficking contributes to species decline and habitat destruction, with estimates suggesting that approximately 10% of insect species are threatened with extinction. It is important to point out that garden ants are not a protected species in CITES (any of the appendices) or in the [*Wildlife Conservation and Management Act*](#).
34. Conservation groups and biosecurity agencies are advocating for stricter regulation and improved monitoring of online insect sales. The online trade of insects, particularly ants, poses significant risks as these species can become invasive when introduced to non-native environments. Invasive ants have been responsible for substantial ecological and economic damage globally.
35. But is there a business case to be made? Is it possible to harness the entrepreneurial zeitgeist of Kenyans by providing a framework for those interested in handling different types of invertebrate? Can the National Museums of Kenya or Kenya Wildlife Service have a section for formicaria and have displays of invertebrate that are unique to Kenya and East Africa? I ask these questions not to provide any answers but to generate debate and discussion around the issue of making a business case. Is it possible to set out guidelines on exportation of not just Messor Cepholates but other creatures because there clear is a ready market as seen online?
36. These factors are important for Kenya and indeed Africa to consider in light of the fact that the continent is richly endowed with natural resources. It is important to wake up the fact that the land we step on, the Continent that was once referred as the “dark continent” is a misnomer. It is time to take our place and ensure that the wealth beneath our feet is used to generate wealth sustainably in the present and for the next generation. The days of going out with a begging bowl because nations are unable to feed themselves are over. They ended. We must as a continent take our place and harness our resources sustainably, if indeed there is a business case to be made for our resources.
37. Could it be the answer lies in the Nagoya Protocol? The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity (“Nagoya Protocol) seeks to address these concerns. Kenya is a signatory to both the Convention on Biological Diversity and the Nagoya Protocol. The protocol was adopted in Nagoya, Japan and has three main objectives: the fair and equitable sharing of benefits arising out of the utilization of genetic resources. More recently earlier this year in what may be seen as a step towards actualizing the Nagoya Protocol there is a Special Issue of the Kenya Gazette Legal Notice 19 being the publications of regulations referred to as the Environmental Management and Coordination (Access to Biological Resources and Benefit Sharing) Regulations, 2025.

Sentencing Guidelines, 2023.

38. There are Sentencing Guidelines, 2023 that guide the courts on sentencing and the indicators relevant to this case are considered below.



39. The Sentencing Guidelines have provisions to cover people like Duh and Dennis who plead guilty at the earliest possible stage. In paragraph 4.3.1 and
4. 3.9 the Guidelines provides:
 3. Accused Persons Pleading Guilty 4.3.1
Although a guilty person is entitled not to admit the offence and to put the prosecution to proof of its case, an acceptance of guilt, reflected in a guilty plea—
 - i. normally reduces the impact of the crime upon the victims;
 - ii. saves victims and witnesses from having to testify; and
 - iii. is in the public interest in that it saves public time and money on investigations and trial.
 4. 3.9
In the case of a mandatory minimum sentence, the discount cannot go below that minimum term set by statute.
40. The principle in this section is that the court is called upon to take into account the benefits that accrue to the court when an accused person pleads guilty. However, where a mandatory minimum sentence is provided for, the court cannot go below what it stipulated in statute.
41. Finally on fines, this is covered in paragraph 2.7 of the Sentencing Guidelines, 2023. The wording of statute is for a mandatory minimum sentence. Paragraph 2.7.2 gives the following rationale, “In some cases, minimum fines are prescribed but, in most cases, the relevant provisions provide the maximum amount payable in fines, leaving the court to determine the level of fine that is appropriate.”
42. There is further direction given in paragraph 2.7.5 which states, “Where the option of a fine is provided in the law, the court must first consider it before proceeding to impose a custodial sentence. If in the circumstances a fine is not a suitable sentence, then the court should expressly indicate the reasons why it is not appropriate to impose a fine.”
43. There is a persuasive authority from the Supreme Court of Canada in R
- v. Nasogaluak - 2010 SCC 6 [2010] 1 SCR 206. One of the limbs on appeal was whether it is possible to issue a sentence lower than the mandatory minimum sentence. The court pronounced itself on this at paragraph 45 where the judges said:
 ...Parliament has also seen fit to reduce the scope of available sanctions for certain offences through the enactment of mandatory minimum sentences. A relatively new phenomenon in Canadian law, the minimum sentence is a forceful expression of governmental policy in the area of criminal law. Certain minimum sentences have been successfully challenged under s. 12 of the Charter on the basis that they constituted grossly disproportionate punishment in the circumstances of the case (R. v. Smith, [1987] 1 S.C.R. 1045; R. v. Bill (1998), 13 C.R. (5th) 125 (B.C.S.C.)), while others have been upheld (R. v. Morrissey, 2000 SCC 39, [2000] 2 S.C.R. 90). Absent a declaration of unconstitutionality, minimum sentences must be ordered where so provided in the Code. A judge’s discretion does not extend so far as to override this clear statement of legislative intent.
44. There are also provisions on what to in wildlife crimes, but these were designed with big game animals in mind. It is time to consider setting guidelines in cases involving wildlife species like Messor Cephalotes which are the subject matter of this case. Additionally, the penalty provided for in the offence that Duh and Dennis face under section 95(c) of the Wildlife



Conservation and Management Act woefully deficient as compared with that for endangered species in section 92 or section 99 of the same act which attract heavy and severe penalties that can act as a serious deterrent.

45. In the meantime, this court will continue to do its best to protect the wildlife in Kenya. This is accurately stated in verse two of the national anthem, “Amkeni ndugu zetu tufanye sote bidi nasi tujitoe kwa nguvu. Nchi yetu ya Kenya tunayoipenda tuwe tayari kuilinda.” (Let all and one arise with hearts both strong and true. Service be our earnest endeavour and our homeland of Kenya heritage of splendour, firm may we stand to defend.)
46. The recommendation in the Victim Impact Statement is for a harsher sentence towards Duh and Dennis. Those who demand such measures, may not know that justice is to be tempered with mercy. They never imagine that one day, they will be need of mercy themselves.
47. I find that Duh and Dennis pleaded guilty on the day of plea. They have accrued benefits to the court and particular, judicial time which is a scarce resource in the Judiciary.
48. Section 95 (c) of the *Wildlife Conservation and Management Act* has a mandatory minimum fine for a for this offence. Duh and Dennis have shown remorse and especially Duh who burst into tears when presenting his mitigation.

Sentencing.

49. In conclusion, Duh and Dennis are sentenced to pay a fine of Kshs 1 million (One Million) each in default they will serve 12 months in prison each.
50. They have 14 days right of appeal.

Return of the Exhibits.

51. Upon payment of the fine or completion of the prison term whichever comes first and if there is no appeal lodged within 14 days the then let the investigating officer return Duh’s passport to him.
52. However, the investigating officer is to make photocopies of both passports ALL pages and these are to be presented in court at the date set by the court.

Destruction of Exhibits.

53. If there is no appeal lodged within 14 days, the items produced in Exhibit 1A (except Duh’s passport) and Exhibit 1B (except the laptop and any phones seized) are to be released to the National Museums of Kenya for them to do as they deem fit within their mandate and according to their protocol and procedure.

Repatriation.

54. Upon payment of the fine or completion of the prison term Duh is to be repatriated through the Immigration Department back to his country of origin.
55. Mention to confirm repatriation if they opted to pay the fine. Mention on June 5, 2025.

DATED, SIGNED AND DELIVERED AT JKIA LAW COURTS THIS DAY OF MAY 2025.

NJERI THUKU

SENIOR PRINCIPAL MAGISTRATE JKIA LAW COURTS

