

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MARSABIT
CRIMINAL APPEAL NO. E036 OF 2025

FRANCIS APPELLANT	EDOKE.....	1st
BENARD APPELLANT	EKAI.....	2nd
ELIJAH APPELLANT	KENZOI.....	3rd
JAMES APPELLANT	EWOI.....	4th
MOSES APPELLANT	EKAI.....	5th

VERSUS

REPUBLIC.....

RESPONDENT

(BEING AN APPEAL ARISING FROM THE CONVICTION AND SENTENCE OF HON A.K AROME (PRINCIPAL MAGISTRATE), IN MARSABIT PRINCIPAL MAGISTRATE COURT CRIMINAL CASE NO E 020 OF 2025, DELIVERED ON 3rd JULY 2025)

ARISING FROM

REPUBLICPROSECUTOR

VERSUS

FRANCIS ACCUSED	EDOKE.....	1st
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BENARD ACCUSED	EKAI.....	2nd
ELIJAH ACCUSED	KENZOI.....	3rd
JAMES ACCUSED	EWOI.....	4th
MOSES ACCUSED	EKAI.....	5th

JUDGEMENT

A. Introduction

1. The Appellants herein were jointly charged with various offences committed within a protected marine area - Sibiloi National Park. On count I, they were charged with the offence of entering into a protected area without a permit, contrary to ***Section 102(1a) of the Wildlife Conservation and Management Act, 2013, Cap 376, laws of Kenya***. The particulars were that on the 2nd day of July 2025, at around 1250hrs, at Barasuma area in Sibiloi National Park within Marsabit county, GPS Coordinates 37N00202258 UTM 0416327, they were found inside the marine protected area at Sibiloi National Park without a permit or other lawful exemption granted under the said Act.

2. On count II, the Appellants were charged with the offence of conveying a trap into a protected area without a permit contrary to **section 102(1), (f) as read together with Section 105 of the Wildlife Conservation and Management Act, 2013, CAP 376 laws of Kenya**. The particulars were that on the 2nd day of July 2025, at around 1250hrs, at Barasuma area in Sibiloi National Park within Marsabit county, GPS Coordinates 37N00202258 UTM 0416327, they conveyed fishing traps, namely fishing nets, inside the marine protected area of Sibiloi National Park without a permit or other lawful exemptions granted under this Act.
3. On count III, the Appellants were charged with the offence of undertaking extractive activities of illegal fishing without a permit, contrary to **Section 102(1g) as read with Section 105 of the Wildlife Conservation and Management Act, 2013, CAP 376 Laws of Kenya**. The particulars were that on the 2nd day of July 2025, at around 1250hrs, at Barasuma area in Sibiloi National Park within Marsabit county, GPS Coordinates 37N00202258 UTM 0416327, they were found undertaking illegal fishing activities using fishing

nets of approximately 200M long, having already extracted fresh fish of about 400kilograms without a permit or lawful exemption granted under the Act.

4. The Appellant were arraigned before court on 03.07.2025 and pleaded guilty on all counts. The trial court did consider their mitigation and sentenced them to serve an imprisonment term of 18 months on each count. The sentence was to run concurrently.
5. Being dissatisfied with the said judgment, the Appellants did file this Appeal challenging both conviction and sentence, but when this Appeal came up for hearing, the Appellants voluntarily abandoned their Appeal against their conviction but urged this court to relook at the sentence passed, which, in their opinion, was harsh and excessive considering the circumstances of this case.
6. The ODPP concedes to this ground of Appeal and further stated that the Appellants had pleaded guilty before the trial court, thus saving the court precious judicial time. It was therefore just and proper to reconsider the sentence passed.

B. Determination

7. Sentencing is determined at the discretion of the trial court after considering the facts of the case, mitigating circumstances, and the penalty provided for under the law. The Appellate court can only interfere where it is shown that the same is grossly erroneous, there is no compliance with the provisions of the law, the finding of fact is not supported by the evidence on record, and where material evidence of the parties is not considered. ***See Republic Vs Stephen Lesinko (2018) eKLR.***

8. Further, on this issue, the Court of Appeal in **Thomas Mwamba Wanyi Vs Republic (2017)eKLR** cited with Approval the decision of the **Supreme Court of India in Alister Antony Pereira Vs The state of Maharashtra** at paragraph 70 - 71, where it was held that ;

“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is the imposition of appropriate, adequate, and proportionate sentences commensurate with the nature and gravity of crime and the manner in which the crime is done.

There is no straight-jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles; the twin objectives of sentencing policy are deterrence and correction. What sentence would meet the end of justice depends on the facts and circumstances of each case, and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all the attendant circumstances. The principle of proportionality by sentencing for a crime committed is well entrenched in criminal jurisprudence. As a matter of law, the proportion between crime and punishment must bear relevant influence in determining the sentence of the crime doer. The court has to take into consideration all aspects, including social interest and consciousness of the society, for the award of an appropriate sentence.

9. Also in ***S v Mchunu and Another (AR24N1)***

(2012) ZAKZPHC 56 Kwa Zulu High Court held that: -

"It is trite law that the issue of sentencing is one which vests a discretion in the trial court. The trial court considers what a fair and appropriate sentence should be. The purpose behind the sentence was set out in *S v Scott - Crossley 2008(1) SACR 223 (SCA) at para 35. Plainly, any sentence imposed must have deterrent and retributive force. But of course, one must not sacrifice an accused person on the altar of deterrence. Whilst deterrence and retribution are legitimate elements of punishment, they are not the only ones, or for that matter even overriding ones... it is true that it is in the interest of justice that crime should be punished. However, punishment that is excessive serves neither the interest of justice nor those of society."*

10. The judiciary has also set out guidelines on sentencing, which outline the purpose of sentencing at **paragraph 4.1**, which states as follows;

“Sentences are imposed to meet the following objectives:

- a) ***Retribution: To punish the offender for his/her criminal conduct in a just manner.***
- b) ***Deterrence:*** To deter the offender from committing a similar offence subsequently, as well as to discourage other people from committing similar offences.
- c) ***Rehabilitation:*** To enable the offender to reform from the criminal disposition and become a law-abiding person.
- d) ***Restorative justice;*** To address the needs arising from the criminal conduct, such as loss and damage. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims needs.
- e) ***Community protection:*** To protect the community by incapacitating the offender

f) **Denunciation.** To communicate the community's condemnation of the criminal conduct.

11. The offences the Appellants were charged with attract a fine of not less than two hundred thousand or imprisonment of not less than two years or both such fine and imprisonment.

12. The offence for which the Appellants were charged is prevalent within the Sibilo National Park, which is a protected area and must be denounced. Be that as it may, I do find and hold that the exercise of discretion by the trial magistrate in sentencing the Appellants was not judicious, considering other factors like the Appellants' ages, the fact that they were first offenders, and the possibility of rehabilitation.

C. Disposition.

13. I do therefore find that this Appeal on sentence has merit. The sentence handed out by the trial court is set aside, and all the Appellants are sentenced to serve eight (8) months' imprisonment from 02.07.2025, when they were arrested.

14. Right of Appeal 14 days.

15. It is so ordered

Judgment read, signed and delivered in open Court at Marsabit this 24th day of October 2025.

**FRANCIS RAYOLA OLEL
JUDGE**

Delivered on the virtual platform, Teams the 24th day of OCTOBER 2025.

In the presence of;

1st - 5th Appellant

Mr. OtienoFor O.D.P.P

Mr. JarsoCourt Assistant

ORIGINAL