



**Kimore & another v Republic (Criminal Revision E139 of 2025)
[2025] KEHC 17120 (KLR) (19 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17120 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKADARA
CRIMINAL REVISION E139 OF 2025
J WAKIAGA, J
NOVEMBER 19, 2025**

BETWEEN

MORIATI OLE KIMORE 1ST APPLICANT

LEPAPA SARUNI 2ND APPLICANT

AND

REPUBLIC RESPONDENT

*(Being revision from the original conviction and sentence of the
Chief Magistrate Court at JKIA Criminal case no E110 of 2024)*

RULING

1. The applicants were charged tried and convicted of the offence of dealing in endangered wildlife trophy contrary to section 92(2) of the *akn ke act 2013 47 Wildlife Conservation and Management Act*.
2. They were convicted of the said offence and sentenced to five (5) years imprisonment and the motor cycle which was used to ferry the trophy Registration Number KMF 897 X forfeited to the Kenya Wildlife Services.
3. The applicants opted not to fail an appeal against the conviction and sentence and adopted the now emerging procedure of filling revision on the sentence.
4. By a Notice of Motion un-dated, the applicants moved the court for Orders
 - a. That the court to call for the lower court file for purposes of reviewing the sentence for compliance with section 333(2) of the CPC
 - b. That the court be pleased to consider the time spent in custody before sentencing and review the five years' imprisonment.



- c. That the court be pleased to give the applicants non-custodial sentence.
5. The application was supported by an annexed affidavit sworn by the applicants in which the deposed that they were arrested on 28th August 2024 and subsequently sentenced on 25th April 2025 to serve five years from the said date without taking into account the eight months they had spent in remand custody.
6. They deposed further that they were peasant farmers herding animals as their daily activities and therefore sought leniency from the court as they were the bread winners of their young family.
7. At the hearing hereof, Ms Kariuki for the prosecution confirmed that the court in sentencing the applicants did not comply with the provision of section 333(2) of the CPC to take into account the time spent in custody.

Determination

8. Having called for the record of the proceedings before the lower court, it is clear that the applicants were in remand custody from the 20th August 2024 when they took plea to the 25th April 2025 when they were eventually sentenced a period of nine months which they ought to have taken into account under the provision of section 333(2) of CPC which I hereby allow. The sentence shall, therefore run from the 20th of August 2024. The applicants are further entitled to remission thereon.
9. I have further reviewed the evidence tendered before the trial court and the fact that the applicants were first offenders and whereas the court pointed out that the Act provided for minimum sentence, that does not mean that the applicants are not entitled to probation sentence where perhaps they will be educated to appreciate the court's concern that elephants are drivers of tourism and are protected species under the Kenyan law and international agreements to which Kenya is a party.
10. I have noted that whereas the applicants were easily arrested on person whom they were with on the same motor cycle whom the applicants honestly believed was the owner of the trophies just walked away leaving the two to face the music.
11. The applicants having not appealed, the best I can do is to substitute their sentence herein with the remainder of the time having taken out the period under section 333(2) of CPC, of three (3) years to be served under probation
12. And it is ordered.

DATED SIGNED AND DELIVERED THIS 19TH DAY OF NOVEMBER 2025

J. WAKIAGA

JUDGE

In the presence of

Court Assistant - Irene

Applicants in person

Ms Kariuki for the State

