REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

CRIMINAL APPEAL NO. E022 OF 2025

1. JAMES MWACHUNU

2. KIMEGA NGANDA……

APPELLANTS

=VERSUS=

REPUBLIC……

RESPONDENT

(Being an appeal from the Sentence of Hon. T. N. Sinkiyian (PM) in Voi Criminal Case No. E112 of 2025 delivered on 24th March 2025)

JUDGMENT

1. The two Appellants were sentenced to serve three (3) years imprisonment for the offence of dealing in meat of wildlife species contrary to Section 98(1) of the Wildlife Conservation and Management Act (WCMA) Cap 376 Laws of Kenya.

2. The particulars of the charge were that on 22nd March 2025 at around 1200hours at Buguta Area within Taita Taveta County, the two Appellants jointly with another who is not before court were found dealing in meat of wildlife species namely dik dik meat

weighing 17kgs, three dik dik heads weighing 2kg and sand grouse bird weighing 1kg without authority or any other lawful exemption.

3. The two Appellants pleaded guilty to the charge.
4. The facts as presented by the prosecutor were as follows:-

   22.3.2025 at 0800hours KWS Rangers and Scout John Karanja, Juma Njeri, Duncan Mwagondi, Lewagat Joseph, Gibran Mukwachila and driver Dominic Kivuva, they left patrol base and went to patrol. They notice some blood stripe on foot prints. They followed the prints into Buguta a home where the footprints ended. They saw 3 men. The men broke into a ran. The rangers pursued them but only caught 2. The 2 identified themselves as James Mwachunu and Kiwega Nganda. They told them who they were. Then told them they wanted to do a search. James said the house is his. Upon search they found Dik Dik heads found were there. They found a bird called sand grouse. They found meat for dik diks as well. They had no permit to have wildlife meat and the bird. They found a patterned blue bag with yellow zip.
5. The parties filed written submissions as follows:- The appellant, James Mwachunu, challenges his conviction and sentence for the

offence of dealing in meat of a wildlife species contrary to section 98(1) of the Wildlife Conservation and Management Act.

6. He raises several grounds in his appeal.

7. First, he contends that his plea of guilty was not unequivocal. While the charge was read to him in Kiswahili, the record does not show that every element of the offence was explained in a language he truly understood.

8. As a person of limited education, described as an "academic dwarf," the court should have exercised greater caution to ensure he comprehended the charge and the proceedings, and its failure to do so rendered the plea ambiguous and the conviction legally defective.

9. Second, the appellant argues that his plea was involuntary, obtained through coercion by police officers who threatened and blackmailed him, promising that he would be released or placed on probation if he pleaded guilty.

10. He maintains that a plea induced by such means violates his right under Article 50 of the Constitution not to be compelled to make an admission that could be used against him.

11. The trial magistrate, he asserts, erred by failing to inquire into the voluntariness of the plea, especially given his lack of education and legal representation.

12. Third, the appellant points to a failure by the trial court to ascertain and record the language he understood best, as required by Article 50(2)(m) of the Constitution and Section 198(1) of the Criminal Procedure Code.

13. The record is silent on the language used for interpretation, and the court did not ask him which language he preferred. This omission, he submits, violated his right to a fair trial and renders the entire proceedings a nullity.

14. Fourth, the appellant submits that the trial court failed to warn him of the seriousness of the charge and the consequences of pleading guilty.

15. He relies on the principle in **Paul Matunga v Republic**, which requires that for serious offences, the court must ensure the accused appreciates the charge and the likely sentence. The absence of such a warning, he argues, vitiates the plea and makes the conviction unsafe.

16. Finally, the appellant challenges the sentence as harsh and excessive. He was a first offender and unrepresented, and the offence involved only a small quantity of bush meat.

17. Despite this, the court imposed a heavy custodial sentence without considering alternatives such as a fine or probation, as

permitted under Section 26(3) of the Penal Code and the Probation of Offenders Act.

18. Citing **Bernard Kimani Gacheru v Republic**, he argues that the trial magistrate ignored his mitigation and acted on wrong principles, resulting in a manifestly excessive sentence.

19. In conclusion, the appellant prays that the appeal be allowed and he be acquitted, or in the alternative, that the court imposes a lesser sentence.

20. The 2nd Appellant told the court orally that he was told by police to plead guilty.

21. He said he had gone to visit the 1st Appellant and he was not in possession of the wildlife meat.

22. I have carefully considered the Record of Appeal, the submissions filed by the first appellant, the oral submissions by the second appellant, and the relevant jurisprudence from the Kenya Law Reports.

23. The conviction entered by the trial court cannot be allowed to stand due to several fundamental flaws in the plea-taking process that go to the very heart of a fair trial.

24. The primary duty of any trial court receiving a plea of guilty from an accused person is to ensure that the plea is unequivocal.

25. This means the court must be absolutely certain that the accused person truly understands the charge he is facing, the essential elements that constitute that offence, and the consequences of admitting to it.

26. The procedure for recording a plea of guilty was definitively established in the seminal case of Adan v Republic [1973] EA 445, a decision whose principles have been reaffirmed and applied consistently by Kenyan courts.

27. The Court of Appeal for Eastern Africa in that case laid down a clear, step-by-step framework as follows;

    (i) First, the charge and all its essential ingredients must be explained to the accused in his language or a language he understands;

    (ii) Second, the accused's own words of admission must be recorded;

    (iii) Third, the prosecutor must immediately state the facts;

    (iv) Fourth, the accused must be given an opportunity to dispute or explain those facts; and

    (v) Finally, if the accused does not deny the facts, a conviction should be recorded.

28. This court has carefully measured the proceedings from the lower court against this mandatory standard and finds the steps lacking.

29. The first point of failure concerns the language of the proceedings. Both appellants have raised the issue, with the first appellant describing himself as a person of limited education.
30. The second appellant informed this court orally that he was merely told by the police to plead guilty and that he had only gone to visit the first appellant and was not in possession of the meat.
31. Article 50(2)(m) of the Constitution guarantees every accused person the right to have a fair trial, which includes the right to be informed of the charge in a language they understand.
32. The record from the trial court is silent on the language used. It does not show that the magistrate inquired from each appellant which language they understood best.
33. Where it is not possible to tell whether the accused understood the charge and proceedings, their constitutional right is violated.
34. Similarly, where it is not explicit in which language the charge was read and explained to the accused person, the plea is rendered unequivocal and the taking and recording of such a plea is improper.
35. The silence of the trial record on this critical aspect is a fatal omission.

36. Furthermore, the record indicates that after the charge was read, the court simply recorded the appellants' response. It did not record their exact words, as required by the second principle in the Adan case.
37. The Court of Appeal in Adan stressed that an accused's own words should be recorded, as the word "guilty" is a technical expression with no exact equivalent in many local languages.
38. By merely noting a response without ensuring and recording that every element of the offence was explained and admitted to in a language the appellants understood, the plea was rendered equivocal.
39. Such words, standing alone, are not sufficient to signify a plea of guilty, particularly without a clear indication on the record that the accused understood the language and the elements of the charge.
40. In the current case, the record does not demonstrate that the appellants' responses were an informed and voluntary admission of guilt.
41. The second appellant's claim that he was told to plead guilty raises the serious issue of the voluntariness of the plea.
42. A plea of guilty must be made freely and without any form of coercion, inducement, or threat. While there is no requirement

that a warning about the sentence must be given in every case, for serious offences, especially where an unrepresented accused person is involved, the trial court is called upon to be particularly solicitous of his welfare.

43. The trial court is not a mere umpire but the protector and guarantor of the process. In this case, the appellants were unrepresented and faced a charge that carries a significant penalty.

44. Given the second appellant's assertion, which was not controverted, that his plea was influenced by police, the trial court ought to have inquired further to satisfy itself that the plea was truly voluntary before proceeding.

45. Its failure to do so creates a doubt that this court must resolve in favour of the appellants.

46. The failure to follow the proper procedure for taking a plea is not a technicality that can be overlooked.

47. Where the language of the court and the language used by witnesses is not indicated, it is a contravention of the constitutional provisions and renders the proceedings a nullity.

48. The court in that case set aside the conviction and sentence on that basis alone. While that was a case that proceeded to full trial, the principle is equally applicable to plea-taking, as the

accused's right to understand the proceedings from the very first moment is paramount.

49. Having found that the plea was unequivocal and the proceedings irregular, the next question is whether this court should order a retrial.

50. A retrial should not be ordered unless it is in the interests of justice and where, on a consideration of the admissible evidence, a conviction might result.

51. A retrial should not be ordered where it is likely to cause an injustice to an accused person. In the present case, several factors militate against ordering a retrial.

52. The offence, while serious, involved a relatively small quantity of bush meat. The first appellant has already been in custody since his arrest on 22nd March 2025.

53. More importantly, the defects in the original proceedings are attributable to the court, not the prosecution, and the second appellant has raised a credible claim of coercion.

54. To order a retrial now, after the appellants have served a portion of their sentence and in light of these circumstances, would, in my view, be oppressive and would not serve the interests of justice.

55. In the end result, the appeal is allowed. The conviction of the two appellants is hereby quashed, and the sentence of three (3) years imprisonment is set aside.
56. The irregular proceedings have rendered the subsequent conviction and sentence a nullity.
57. The Appellants, James Mwachunu and Kimega Nganda, to be set at liberty forthwith unless they are otherwise lawfully held.
58. Orders to issue accordingly.

Dated, signed and delivered this 24th day of February 2026 virtually via MT Teams at Voi High Court.

ASENATH ONGERI

JUDGE

In the presence of:-
Court Assistant: Millicent/Mabishi
Prosecutor: Mrs. Kanyuira
The Appellants present at Voi GK Prison