



**Chemtela v Republic (Criminal Appeal E032 of 2025)
[2026] KEHC 4118 (KLR) (25 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 4118 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL APPEAL E032 OF 2025
PJO OTIENO, J
MARCH 25, 2026**

BETWEEN

VINCENT INDIEMA CHEMTELA APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

Background of the Appeal

1. Before this court is an appeal against the judgment and orders of Hon. M.A. Ochieng the (PM) in Kitale CMCC Case No. E529 of 2024 delivered on the 22/02/2024. The Appellant alongside a co-accused named, Kennedy Kiptoo ChepkoiI were charged in count I with the offence of entering a protected area without a permit, contrary to Section 102(1)(a) of the *Wildlife Conservation and Management Act*, 2013. The particulars of the charge were that on the 10th day of February 2024, at approximately 6:00 p.m., the Appellant was found inside the Mount Elgon National Park, a protected area, without having been issued a valid entry permit by the Kenya Wildlife Service.
2. In Count 11, the Appellant faced a charge of conveying hunting apparatus into a protected area, contrary to Section 102(1)(f) of the same Act. The prosecution alleged that at the time of his arrest inside the park, the Appellant was in possession of seven snares and a panga, items categorized as hunting apparatus under the law.
3. The Appellant and his co-accused was first arraigned in court on the 12/02/2024 whereby after the substance of the charges were read to them in a language they both understood, both of them entered a plea of guilty on both counts. The prosecution then provided a summary of the facts and which the Appellant admitted to be correct. Consequently, the trial court entered a conviction on the Appellant's own plea of guilty. Before sentencing, the court requested a pre-sentencing probation report, which was subsequently presented and read to the accused on the 22/02/2024. The trial court accordingly sentenced the Appellant to a fine of Kenya Shillings Two Hundred Thousand (Kshs. 200,000/=) or,



in default of payment, to serve two (2) years of imprisonment for each of the two counts, with the two sentences for the two counts ordered to run consecutively.

4. Aggrieved by this outcome, the Appellant lodged the instant appeal vide petition of appeal predicated on eight distinct grounds of appeal. The grounds primarily targets the legality of the sentencing process, the structural integrity of the charges, and the proportionality of the punishment in light of the circumstances surrounding the offence. The appeal rests on the assertion that the trial court misapplied the law regarding repeat offenders and failed to observe the established principles of concurrent sentencing for offences arising from a single criminal transaction. The Appellant prays that the appeal be allowed, the judgment of the lower court be set aside, and the Appellant be released or, in the alternative, that the time already served in prison be deemed a sufficient sentence.

Summary of the Trial Proceedings

5. The record shows that after the substance of the charges and every essential element thereof were explained to the Appellant and his co-accused in a language they understood, they both unequivocally admitted the truth of the charges in both Count I and Count II. Upon the entry of the plea of guilty, the court invited the prosecution to provide the statement of facts. The facts were that on the 10/02/2024, KWS officers were conducting a foot patrol within the park at approximately 6:00 p.m. During this patrol, they encountered the Appellant and his co-accused inside the park boundaries. A search revealed that the individuals were in possession of seven snares and a panga. The prosecution emphasized that the accused persons could not produce any permit authorizing their entry or activities within the protected area. The Appellant and the co-accused were subsequently arrested and escorted to Endebess Police Station.
6. As part of the evidence, the prosecution produced photographs of the scene and the recovered items. When the court asked the Appellant if he agreed with these facts, he responded in the affirmative. Consequently, the court convicted the Appellant on his own plea of guilty.
7. The court then turned to the issue of previous records. The prosecution stated that the accused were not first-time offenders, citing Case No. 52210/2023, where they had been charged in June 2023 and sentenced to one day of Community Service Order. In mitigation, the Appellant expressed remorse, stating, "I am sorry. I have school going children". The court, seeking to balance the need for punishment with the offender's circumstances, ordered a pre-sentencing probation report.
8. The sentencing session held on the 22/02/2024 saw the introduction of the probation report that provided that the Appellant was a first-time offender. Despite the earlier mention of a previous record, the prosecution noted to be in agreement with the report and that the accused were "first offenders" in the context of the current specific wildlife charges. The Appellant used this opportunity to mention his children in Form 1 and Form 2, while the first accused asked for permission to go see his family. However, the trial magistrate, having considered the nature of the charges and the mitigation, proceeded to impose the fine of Kshs. 200,000/= for each count and in default two years' imprisonment. The prison sentences were to run consecutively.

Summary of the Appellant's Submissions

9. The Appellant submits on four primary issues for determination by this court being:
 - (i) the existence of the law under which he was charged, hence legality of the charge;
 - (ii) the conclusiveness of the probation report;
 - (iii) the excessiveness of the sentence; and,



- (iv) the overall merit of the appeal.
10. Regarding the legality of the charge, the Appellant emphasizes that precision is a cornerstone of criminal law. He argues that he was sentenced based on Section 102(1)(A) and 102(F), which he claims are non-existent. He posits that in legislative drafting, small letters indicate original provisions, while capital letters indicate amendments. He contends that the citations in the charge sheet referred to amendments that do not exist in the *Wildlife Conservation and Management Act*, 2013. The Appellant cites the case of Maukeni HCCRREV no. 162 of 2020 to justify this position.
 11. On the probation report, the Appellant submits that the trial court erred by relying on a document that was incomplete and contradictory. He notes that while such reports are intended to assist the court, they cannot be substitutes for judicial discretion. He references Republic vs Jared Koita Injiri (2019) eKLR, asserting that sentencing is a judicial function and the court must conduct its own assessment of an offender's suitability for non-custodial measures. The Appellant argues that the report in his case lacked verifiable community input and failed to provide a clear assessment of his potential for rehabilitation.
 12. Concerning the sentence, the Appellant argues that it was manifestly excessive. He contends that the trial magistrate failed to consider material mitigating factors, such as his attitude toward the offence and his family obligations. He further argues that the court acted on a wrong principle by ordering the sentences to run consecutively rather than concurrently, especially since the two counts arose from the same transaction. He prays that the court allows the appeal, sets aside the conviction and sentence, or, in the alternative, finds the time already served to be sufficient.

Summary of the Respondent's Submissions

13. The Respondent, through the Office of the Director of Public Prosecutions, opposes the appeal and seeks the dismissal of the Petition of Appeal. The Respondent's submissions focus on the validity of the plea taking process and the legality of the sentence.
14. First, the Respondent argues that the plea of guilty was unequivocal and followed the guidelines set out in Adan vs Republic 445. [1973] EA 445. The Respondent points out that the record from the trial court clearly shows that the charges and every essential element were explained to the Appellant in a language he understood. The Appellant's admission and subsequent mitigation are cited as evidence that he fully understood the nature of the charges. The Respondent references Section 348 of the Criminal Procedure Code, which limits the grounds for appeal following a guilty plea to the legality and severity of the sentence.
15. Second, the Respondent addresses the Appellant's claim regarding non-existent laws. It is submitted that Sections 102(1)(a) and 102(f) do exist in the *Wildlife Conservation and Management Act*, 2013. The Respondent argues that the Appellant was not misled or prejudiced by the way the sections were cited in the charge sheet and that the core ingredients of the offences were well-established.
16. Regarding the sentence, the Respondent maintains that it was within the legal limits. It is pointed out that the minimum sentence for the counts charged is two years, which is what the trial magistrate imposed. The Respondent argues that the trial court exercised its discretion properly, taking into account the need to protect the environment and the Appellant's status as a repeat offender. The Respondent highlights that the Appellant had a previous record in Kitale Magistrate's Court (Case No. 2239 of 2023), which justified a stern penalty. The Respondent prays that the appeal be dismissed and the sentence upheld.



Issues, Analysis and Determination

17. Having considered the trial record, the Petition of Appeal, and the rival submissions of both the Appellant and the Respondent, the court has identified the issues for determination to be:
- i. Whether the Appellant's plea of guilty was unequivocal and whether the trial court followed the correct procedure in plea taking;
 - ii. Whether the Appellant was charged under non-existent provisions of the law; and,
 - iii. Whether the sentence was excessive and whether the trial court erred by ordering the sentences to run consecutively.
18. On the first issue on the alleged equivocal nature of the Plea and Procedural Compliance, the court points that a plea of guilty is a formal admission of all the essential ingredients of an offence and that because it waives the right to a full trial, the courts have established stringent requirements to ensure that an accused person, particularly one who is unrepresented, truly understands the consequences of their admission.
19. The Court of Appeal in the case *Adan vs Republic* [1973] E.A considered what ought to be done when plea is taken. The court stated: -

“The courts have always been concerned that an accused person should not be convicted on his plea unless it was certain that he really understood the charge and had no defence to it. The danger of a conviction on an equivocal plea is obviously greatest where the accused is unrepresented, is of limited education and does not speak the language of the court. For this reason, it has long been a rule of practice that where a plea appears to be one of guilty, it must be recorded in the words of the accused. The word “guilty” is one to be treated with the greatest caution: it is a technical expression and it was said in *Byarufu Gafa V. R.* [1950] 17 E.A.C.A. 125, and *M’Mwenda V. Republic* [1957] EA 429 that there is no word exactly corresponding to it in any of the languages of Uganda or Kenya respectively. It might be added that while the idea of stealing is one universally known, it does not follow that every language has a word corresponding to the English word “steal” which excludes a taking under a bona fide claim of right.”

20. In that case, the Court of Appeal then gave directions on how plea should be taken. It stated: -

“When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused then admits all those essential elements, the magistrate should record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty. The magistrate should next ask the prosecutor to state the facts of the alleged offence and when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts. If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilt, the magistrate should record a change of plea to “not guilty” and proceed to hold a trial. If the accused does not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear



any further facts relevant to sentence. The statement of facts and the accused’s reply must, of course, be recorded.”

21. A perusal of the trial record proceedings taken on the 12/02/2024 reveals that the learned magistrate meticulously followed these steps. The Appellant was informed of the charges in Kiswahili. He responded “It is true” to both counts. After the prosecutor stated the facts detailing the arrest inside Mount Elgon National Park with seven snares, the Appellant explicitly stated, “I agree”. Furthermore, in his mitigation, he expressed remorse and mentioned his children, reinforces the conclusion that he was not under a misapprehension regarding the nature of the proceedings.
22. Under Section 348 of the Criminal Procedure Code, a conviction based on an unequivocal plea of guilty is generally not subject to appeal, except as to the legality or severity of the sentence. The Appellant’s attempt to challenge the conviction on the basis of technicalities in the charge sheet must therefore be viewed through the lens of whether those technicalities were so fundamental that they rendered the plea equivocal. However, having found that the Appellant understood the conduct he was admitting to, unauthorized entry and possession of snares, the Court holds that the plea was unequivocal and the conviction was procedurally sound and legally safe.
23. Having held so, the court proceeds to determine the Appellant’s primary legal challenge on the citation of Sections 102(1)(A) and 102(F) in the charge sheet. He argues that these are non-existent and that the trial court lacked jurisdiction to convict on such charges. This argument centres on the principal of legality under article 50 (2) of *the constitution* and rests on a distinction between capital and lowercase letters in legislative drafting, suggesting that the former refers to amendments that have not been enacted.
24. The *Wildlife Conservation and Management Act*, 2013, is the primary statute governing this matter. Section 102(1) deals with the breach of protected area regulations. The relevant sub-sections are clearly identifiable being Section 102(1)(a) which prohibits entering or residing in a national park or reserve without a license or permit and Section 102(1)(f) that prohibits conveying into a protected area any weapon, snare, trap, or device capable of being used to hunt or kill wildlife.
25. While the charge sheet used uppercase letters (A and F), the core substance of the charges was unmistakably aligned with the existing law. Article 50(2)(b) of *the Constitution* grants an accused the right to be informed of the charge with sufficient detail to answer it. The question is whether the capitalization error prejudiced the Appellant. The record shows that the particulars of the charge clearly described the prohibited acts: entering Mount Elgon National Park without a permit and possessing seven snares.
26. In the case of Francis Zuriels Moturi vs Republic [2022] eKLR, the Court of Appeal held that in determining if a charge is defective, a court must consider if the charge sheet contains sufficient particulars to enable the accused to know the case against them. Similarly, Section 382 of the Criminal Procedure Code provides that no finding or sentence shall be reversed on appeal on account of an error or irregularity in the charge unless such error has occasioned a failure of justice.
27. Given that the Appellant admitted to the conduct described and offered mitigation, it is clear he was not misled by the capitalization. The reliance on Maukeni HCCRREV no 162 of 2020 is misplaced here, as in that case, the provision cited was truly non-existent in substance, whereas here, the error is merely formalistic. This Court finds that the Appellant was charged under existing law and suffered no prejudice from the minor typographical variance.



28. The Appellant is aggrieved by the consecutive nature of the sentences. The Appellant was sentenced to two years per count, to run consecutively, resulting in a total of four years in prison if the fines are not paid.
29. The principle of sentencing for multiple offences committed during the same incident is well-established in East African jurisprudence. In *Sawedi Mukasa s/o Abdulla Aligwaisa v R* [1946] 13 EACA 97, and more recently in *Peter Mbugua Kabui v Republic NRB CA Criminal Appeal No. 66 of 2015 [2016] eKLR*, the courts have held that where offences arise from the same transaction, concurrent sentences should generally be imposed.
30. In the instant case, the Appellant entered the park (Count I) and as part of that same entry, was found carrying snares under (Count II). These were not separate criminal events occurring at different times or locations. Carrying the snares was the primary motive for the unauthorized entry; the two acts were inextricably linked in a single criminal enterprise. By ordering the sentences to run consecutively, the trial magistrate effectively punished the Appellant twice for the same transaction, which constitutes an error in principle.
31. Furthermore, on characterization of the Appellant as a repeat offender, the court notes that the previous conviction cited, MCCR E2239 of 2023, was for clearing land in a public forest contrary to the *Forest Conservation and Management Act*, 2016. While both involve environmental laws, the Forest Act and the Wildlife Act have different regulatory scopes and social objectives. Treating a forest-related land clearing offence as a prior for a wildlife poaching-related offence is problematic, especially when using it to justify a consecutive sentencing structure that doubles the minimum statutory term. Taken alone as proof of antecedents is however a relevant factor in assessment of the severity of the sentence.
32. The Respondent argues that the two-year sentence per count is the minimum under the Act. Indeed, Section 102 provides for a fine of not less than Kshs. 200,000/= or imprisonment of not less than two years. However, the law does not mandate that these minimums must run consecutively when they arise from the same act. In *Julius Chacha v Republic* [2015] eKLR Criminal Appeal 189 of 2014, the court faced an identical situation where an accused was sentenced consecutively for entering a park and setting fire to vegetation; the High Court substituted these with concurrent sentences, finding that the trial court had erred.
33. The upshot is that while the conviction was safe and appeal against it fails, the sentencing structure was flawed. Consequently, the appeal is allowed only to the extent of modifying the sentencing structure from consecutive to concurrent. Pursuant to Section 333(2) of the Criminal Procedure Code, the Appellant shall be given credit for the period he has already spent in custody since his conviction on the 29/06/2023.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 25TH DAY OF MARCH, 2026.

PATRICK J O OTIENO

JUDGE

