



**Republic v Parimeris & another (Criminal Case E871 of 2023)
[2025] KEMC 290 (KLR) (26 November 2025) (Judgment)**

Neutral citation: [2025] KEMC 290 (KLR)

**REPUBLIC OF KENYA
IN THE MAKINDU LAW COURTS
CRIMINAL CASE E871 OF 2023
YA SHIKANDA, SPM
NOVEMBER 26, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JAMES KOTOKE PARIMERIS 1ST ACCUSED

ESTHER NAIYAMOI NKAO 2ND ACCUSED

JUDGMENT

1. James Kotoke Parimeris and Esther Naiyamoi Nkao (hereinafter referred to as the 1st and 2nd accused persons respectively) were jointly charged with the offence of being in possession of endangered wildlife trophy without a permit contrary to section 92(4) of the *Wildlife Conservation and Management Act*. The particulars of the offence are that on 4/10/2023 at Green corner guest house in Emali town within Makueni County, the accused persons were jointly found in possession of seven pieces of elephant tusks with a street value of Ksh. 700,000/=, without a permit or other lawful exemption. The accused persons initially pleaded guilty to the charge but later changed their plea to not guilty. However, the 2nd accused changed her plea to guilty and was convicted and sentenced accordingly. The case thus proceeded against the 1st accused person alone.

The Evidence

2. The prosecution case was partly heard by another Magistrate who was subsequently transferred. Upon taking directions under section 200(3) of the Criminal Procedure Code, it was directed that the matter proceeds from where it had reached.

The Prosecution Case

3. The prosecution called a total of five (5) witnesses in a bid to prove their case against the accused person. PW 1 Esther Nguta testified that she was a Research Scientist at the National Museums of Kenya. Her



evidence was that on 6/10/2023 she received seven exhibits for purposes of identifying what they were and from which species. Upon analysis, the witness established that the seven pieces were of elephant tusks. She produced her report in evidence. PW 2 Boniface Kimeu David testified that he worked at Green corner guest house in Emali. That he was a receptionist. The witness testified that on 4/10/2023 the 2nd accused person went to the Guest house looking for a room. The witness allocated to her room number 33.

4. PW 2 stated that after about two hours, three men appeared and identified themselves as police officers. They asked the witness to take them to room 33, which he did. PW 2 returned to the reception and while there, he saw the police officers leaving with the 2nd accused person and the 1st accused person. That the 2nd accused person was carrying a black bag. PW 2 stated that the 2nd accused person had arrived with the bag when she went to ask for a room. That later, and before the police arrived, the 1st accused person had appeared and informed PW 2 that he wanted to go to room 33 then proceeded to the said room. PW 3 KWS Corporal Michael Odongo testified that on 27/10/2023 he received an exhibit memo and elephant tusks from Police Corporal James Opiyo. The witness was asked to weigh the tusks which were seven in number. He weighed them and found the total weight to be 6.4 kgs. The witness produced in evidence the weighing certificate as well as the calibration certificate of the weighing scale that he used.
5. PW 4 Police Corporal Oroba Nickson Anga testified that on 4/10/2023 the DCI Director received intelligence that there were people dealing in elephant tusks and endangered species. The witness was informed that the suspects were at Emali. The witness together with his colleagues travelled to Emali and when they arrived, they proceeded to Green corner lodge, room 33 as they had been directed. They entered the room and found the accused persons herein. A quick search was conducted and a black bag was recovered. Upon opening the bag, seven pieces of what was believed to be elephant tusks were recovered. The accused persons were then arrested and taken to Emali police station.
6. PW 5 Police Corporal James Opiyo testified that he accompanied PW 4 to Emali town. The witness narrated how they went to the guest house and found the accused persons. He also explained how the elephant tusks were recovered. The witness took the tusks to the National Museums for identification and it was established that they were elephant tusks. The tusks were produced in evidence together with other items.

The Defence Case

7. Upon being placed on his defence, the 1st accused person gave a sworn testimony without calling any other witness. The 1st accused person testified that on 4/10/2023 he was called by the 2nd accused person who asked him to meet her at Emali town. That he had met her three weeks prior. The 1st accused person travelled to Emali and proceeded to the guest house as he had been directed by the 2nd accused person. That he found the 2nd accused person with a man and was told that the man was a security guard. The man left but returned later at about 9:00 pm and shortly thereafter, police officers arrived. That the 2nd accused person had a luggage and when they were taken to the police station, the 1st accused person realised that the luggage contained elephant tusks. The 1st accused person denied being involved with the elephant tusks.

Facts Not in Dispute

8. From the evidence of both parties, the following facts are not in dispute:
 - a. On 4/10/2023 the 1st accused person as well as the 2nd accused person were found at Green corner guest house in Emali town;



- b. A bag was recovered from the room wherein the accused persons were found;
- c. The bag contained what was later confirmed to be elephant tusks;
- d. None of the accused person had a permit or lawful authority to be in possession of the elephant tusks.

Main Issues for Determination

9. In my view, and in consideration of the charge, the main issues for determination are as follows:
 - i. Whether the 1st accused person was found in possession of the elephant tusks;
 - ii. Whether the trophy was of an endangered species and in particular elephant tusks;
 - iii. If (i) and (ii) above are in the affirmative, whether the 1st accused person had a permit;
 - iv. Whether the prosecution has proven its case against the 1st accused person to the required standard.

Analysis and Determination

10. I have carefully considered the evidence on record as well as the law applicable. Section 92(4) of the *Wildlife Conservation and Management Act* provides:

“Any person without permit or exemption issued under this Act is in possession of any live wildlife species or trophy of any critically endangered or endangered species as specified in the Sixth Schedule or listed under CITES Appendix I, commits an offence and shall be liable upon conviction to a fine of not less than three million shillings or a term of imprisonment of not less than five years or both such fine and imprisonment.”
11. Under the sixth schedule of the Act, the African elephant is listed as an endangered species. Section 3 of the governing Act defines the term “deal” as follows:
 - a. to sell, purchase, distribute, barter, give, receive, administer, supply, or otherwise in any manner deal with a trophy or live species;
 - b. to cut, carve, polish, preserve, clean, mount or otherwise prepare a trophy or live species;
 - c. to transport or convey a trophy or live species;
 - d. to be in possession of any trophy or live species with intent to supply to another; or
 - e. to do or offer to do any act preparatory to, in furtherance of, or for the purpose of, an act specified above;
12. Section 3 of the Act further defines the phrase “endangered species” as any wildlife specified in the Fourth Schedule (ought to be the sixth schedule) of the Act or declared as such by any other written law or any wildlife specified in Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The same provision defines “government trophy” as a trophy declared to be a Government trophy by or under the provisions of the Act. The *Wildlife Conservation*



and Management Act does not define the term "possession." The definition is to be found in section 4 of the Penal code which provides as follows:

- “(a) “be in possession of” or “have in possession” includes not only having in one’s own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or of any other person;
- (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them.”

13. In my opinion, for the offence herein to be proven, the prosecution must establish the following elements:

- a. The 1st accused person was found in possession of Elephant tusks;
- b. The Elephant is an endangered wildlife species;
- c. The 1st accused person did not have a permit or exemption.

14. The Elephant tusks were produced in evidence and according to the report by PW 1 Rsther Nguta, the items were Elephant tusks.

15. I have considered the 1st accused person’s defence. The gist of his defence is that he was called by the 2nd accused person and that when he went to meet her, the police arrived and arrested them. The evidence of the 1st accused person was that he was not involved in any business concerning the tusks. The prosecution evidence indicates that the 1st accused person did not go to the room while in the company of the 2nd accused person. The room was booked by the 2nd accused person. The prosecution evidence further reveals that it was the 2nd accused person who went to the guest house while carrying the bag. The investigating officer stated that when they interrogated the accused persons, the 1st accused person informed him that he had just gone to visit the 2nd accused person. The 1st accused person maintained that line of defence in his testimony. It cannot therefore be said to have been an afterthought.

16. The duty is on the prosecution to prove its case against the accused persons beyond reasonable doubt. In *Philip Nzaka Watu v Republic* [2006] eKLR, it was held that to find a conviction in a Criminal case, the trial court has to be satisfied of the accused person’s guilt beyond reasonable doubt. On proof beyond reasonable doubt, the court stated in *Stephen Nguli Mulili v Republic* [2014] eKLR:

“It is not in doubt that the burden of proof lies with the prosecution. The locus classicus on this is the case of *DPP v Woolmington*, (1935) UKHL 1 where the court eloquently stated that the “golden thread” in the “web of English common law” is that it is the duty of the prosecution to prove its case. The Kenyan Courts have upheld this position in numerous cases. See *Festus Mukati Murwa v R*, [2013] eKLR.”

17. In the famous case of *Miller v Ministry of Pensions* [1947] 2 All ER 372, Lord Denning stated with regard to the degree of proof beyond reasonable doubt:

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a



doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

18. In *Bakare v State* (1987) 1 NWLR (PT 52) 579, the Supreme Court of Nigeria emphasized on the phrase proof beyond reasonable doubt, stating:

“Proof beyond reasonable doubt stems out of the compelling presumption of innocence inherent in our adversary system of criminal justice. To displace the presumption, the evidence of the prosecution must prove beyond reasonable doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure, including the administration of criminal justice. Proof beyond reasonable doubt means just what it says it does not admit of plausible possibilities but does admit of a high degree of cogency consistent with an equally high degree of probability.” (Emphasis mine)

19. It matters not that the 1st accused person may not have told the truth. What matters is whether there is sufficient evidence against him. There is no evidence to show that the 1st accused person was privy to the contents of the bag which had been carried by the 2nd accused person. There is no evidence of communication between the 1st and 2nd accused persons that would warrant the court to make a finding that there was a common intention between the two accused persons. In my view, the prosecution evidence has not ruled out the fact that the 1st accused person had only gone to the guest house to meet the 2nd accused person. It is not enough to merely show that the 1st accused person was found in the room where the elephant tusks were recovered from.
20. The place where the accused persons were found was not owned by the 1st accused person. The prosecution evidence shows that it was the 2nd accused person who rented the room. The 1st accused person joined her later. Given the circumstances, the prosecution ought to have adduced evidence that would link the 1st accused person to the elephant tusks. It was not the duty of the 1st accused person to establish his connection to the elephant tusks nor is it the duty of the court. The prosecution evidence corroborates the version that was given by the 1st accused person. I have no reason to disregard the 1st accused person’s defence. There is room for reasonable doubt and as a matter of law, the doubt must be resolved in favour of the 1st accused person. What we have on record is mere suspicion against the accused person. In the case of *Joan Chebichii Sawe v Republic* [2003] eKLR, the Court of Appeal held thus:

“The suspicion may be strong but this is a game with clear and settled rules of engagement. The prosecution must prove the case against the accused beyond any reasonable doubt. As this court made clear in the case of *Mary Wanjiku Gichira v Republic* (Criminal Appeal No. 17 of 1998 (unreported), Suspicion however strong, cannot provide a basis for inferring guilt which must be proved by evidence”

Disposition

21. In view of the foregoing, I find that the prosecution has failed to prove its case against the accused person beyond reasonable doubt. Consequently, I find and hold that the 1st accused person is not guilty of the offence of Possession of endangered wildlife trophy without a permit or other lawful exemption contrary to section 92(4) of the *Wildlife Conservation and Management Act*. As the glove does not fit, I proceed to acquit him accordingly.



DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 26TH DAY OF NOVEMBER, 2025.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.

