



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Tuiya & 2 others (Case E179 of 2024)
[2025] KEMC 328 (KLR) (1 July 2025) (Sentence)**

Neutral citation: [2025] KEMC 328 (KLR)

**REPUBLIC OF KENYA
IN THE JKIA LAW COURTS
CASE E179 OF 2024
AN THUKU, SPM
JULY 1, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

KIPRONO ARAP TUIYA 1ST ACCUSED

ERIC KIPNGENO CHERUIYOT 2ND ACCUSED

HARON KIPRONO MISIK 3RD ACCUSED

SENTENCE

1. The Sentencing in this case involves three people aged 85 years, 56 years and 23 years respectively. They are all men; they were arrested on the same day and today they face the same fate. But for each of them it is different because though they were tried together, their ages give a different perspective on the fate before this court.
2. Mr. Lusweti is their defence counsel and Ms. Rono represents the prosecution. The names of the accused persons are Kiprono Arap Tuya, Eric Kipngeno Cheruiyot and Haron Kiprono Misik.
3. All three were charged with dealing in trophy of endangered wildlife species contrary to section 92(2) as read with section 105(1)(A) of the *Wildlife Conservation and Management Act*, Cap 376 of the Laws of Kenya.
4. The particulars of the offence are that on the 3rd day of December 2024, at around 1910 hours, at Kimalany- Muriat area of Kuresoi south Sub-County within Nakuru County at GPS coordinates 37M 0799499 UTM 9957460, Kiprono, Eric and Haron were found jointly with others not before court dealing in thirteen pieces of elephant tusks, concealed in two cartons and two white sacks weighing 58 kilograms being transported using motorcycle Reg. No. KMEF 189Z Boxer make, with street value of Kshs 5.8 million without a permit from the Director General, Kenya Wildlife Service.



5. After a trial that lasted six months, the court found them guilty of being in possession of a wildlife trophy contrary to section 92(4) of the [Wildlife Conservation and Management Act](#).
6. Both Kiprono and Eric have been in pre-trial detention since their arrest and owing to Kiprono's age, the court did its best to fast-track the trial. Kiprono is 85 years old, Eric is 56 years old and Haron is 23 years old.
7. The rest of the sentencing proceeds as follows, a look at the law, mitigation by Mr. Lusweti, a summary of the three Pre-Sentence Reports, reference to the Sentencing Guidelines, critical factors and finally the sentencing.

The Law

8. Section 92(4) of the [Wildlife Conservation and Management Act](#), 2013 provides:
 - (4) 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.

Mitigation and the Pre-Sentence Reports

9. Ms. Rono for the Prosecution informed the court that Kiprono, Eric and Haron may be treated as first offenders.
10. Mr. Lusweti for Defence mitigated as follows for each of them. With regard to Kiprono, he: Is 85 years old. Is a widower and lives alone even though he has children. Asks for mercy from the court owing to his age. Seeks a non-custodial sentence. Has failing health. Wants to enjoy his sunset years in freedom and not behind bars. Will suffer greatly if he is incarcerated. Suffers from old age illnesses.
11. With regard to Eric, Mr. Lusweti said he: Is 56 years old. Has a wife who is a farmer in the village. Works as a cattle trader in Molo. Is the sole bread winner of his family. Asks the court to have mercy on him and give him a non-custodial sentence. Suffers from diabetes and uses herbal medicine because he cannot afford medication. Will follow any requirements given on community service orders.
12. With regard to Haron, Mr. Lusweti said he: Is 23 years old. Started college but then dropped out due to lack of fees. Still lives at home. Asks the court for a non-custodial sentence. Regrets the offence even though he maintains his innocence. Is a first offender.
13. I have read the Pre-Sentence Reports and I am grateful to the JKIA Probation Office for the detailed reports.
14. It paints the following picture of Kiprono. He is 85 years old; he is a father and grandfather. His wife passed away but all his eight children are alive. Kiprono denies committing the offence but seeks mercy from the court. His family ask for a custodial sentence given his advanced age and poor health. The recommendation by the Probation Officer is that Kiprono rehabilitated back to the society through an order for community service order.
15. I have read Eric's Pre-Sentence Report. He is 56 years old and only his mother is alive. Eric is married and the father of six children. According to the Pre-Sentence Report, Eric is psychologically affected because of this case. Eric denies committing the offence though he asks the court for leniency, on the grounds that he is a first offender with no previous records. His report also states that Eric is sole



bread winner of his family and that a custodial sentence will harm his family. His local assistant chief in Kaplamai sub-location described Eric as having “questionable character.”

16. I have read Haron’s report. He is the youngest of the accused persons at 23 years old. He is the fifth born in a family of seven children. He maintains his innocence that he was not transporting any tusks. He was passing by the crime scene when the police arrested him. That is his story which he is sticking to. Haron asks the court for mercy.
17. The complainant and victim is the Kenya Wildlife Service (KWS). In Kiprono’s Pre-Sentence Report, their views are not captured. But they are expressed in the Pre-Sentence Reports for Eric and Haron. In Eric’s report the view of KWS is that the law takes its course. In Haron’s report KWS seeks the sentence provided for in law to protect elephants which form part of the “Big Five” animals in Kenya. As a side note to the Probation Officers and for the future, it is important that the standard parameters for preparing Pre-Sentence Reports are met. This ensures there is standardization in the reports as presented.

Sentencing Guidelines, 2023

18. In terms of the minimum mandatory sentences, the guidelines at paragraph 2.3.16 gives guidelines as seen below:

2.3.16 Where the law provides mandatory minimum sentences, the court is bound by those provisions and must not impose a sentence lower than what is prescribed. A fine shall not substitute a term of imprisonment where a minimum term of imprisonment is the only option provided. Courts must however remain cognisant of any changes made to the applicability of mandatory minimum sentences with respect to specific offences given the clear concerns that have been raised in a number of cases about the constitutionality of such sentences.

19. The effect of the provision above is that a sentencing court such as this one has no discretion to divert from the provisions prescribed by law. What is set in statute is what is applicable in court. Thus, the recommendation for a community service order for Kiprono despite his advanced age is not available. This is because the penal provision under section 92(4) of the [Wildlife Conservation and Management Act, 2013](#) is mandatory minimum sentence.
20. The Sentencing Guidelines, 2023 also speak at length on wildlife offences. It states at paragraphs 5.2.8, 5.2.9 and 5.2.10 which I reproduce at length:

Offences Concerning Wildlife

5.2.8 The destruction of Kenya’s wildlife negatively impacts a significant contributor to Kenya’s Gross Domestic Product, namely tourism. At present, global discussions of climate change and biodiversity protection demand greater attention to how Kenya must address the need to protect the environment. The contribution of wildlife to Kenya’s ecosystems is key to this objective. Whilst great strides have been made in recent years regarding legislative reform and addressing stronger prosecutions and investigations in this field, sentences must properly reflect the harm caused and further deter such offending.

5.2.9 Typically sentencing in this arena does not fully take into account the impact upon the environment or the impact upon human populations are affected by such crimes. Some of the relevant laws have not been updated to take into account the current climate.

5.2.10 Many offences concerning protected species (both wildlife and forestry) call for minimum sentences to be applied. These Guidelines state the current position on such mandatory



minimum terms. Below are some factors to take into consideration that may justify an elevation from the mandatory minimum term in certain circumstances. Were such minimum terms to be removed from the statute books, these factors may guide the sentencing court in determining the level of seriousness and appropriate ‘bandwidth’ on sentence, more generally. This is not an exhaustive list and courts must take care to consider all relevant factors:

- The species is a particular driver of tourism or other economic benefit to Kenya.
- The species is a protected species under Kenyan law or international agreement to which Kenya is party, such as the Convention on International Trade in Endangered Species (CITES).
- The offence against the protected species also took place within a protected area.
- The accused is a public official charged with the duty of protecting Kenya’s natural resources and heritage or involved law enforcement or military officials in the commission of the offence.
- The commission of the offence involved international elements.
- The offence involved a group of persons acting in the execution or furtherance of a common purpose, in which the accused played a leadership role.
- The offence was planned or meticulously premeditated and executed.
- The offence was committed for commercial purposes with a high value, whether realised or not.
- The offence involved a high degree of sophistication in execution such as the use of poisoning, illegal weaponry or explosives, concealment of trophies, or corruption of others.
- A protected species was actually killed.
- A law enforcement officer was killed or injured during the execution of the offence.
- Death or injury to any human.
- The offence involved a large number of protected species.
- The offence caused significant damage to the environment or a community (e.g., pollution or loss of a keystone species).
- Where damage has been caused, the cost of clean-up/restoration/rebuilding is significant.
- The offence caused significant financial loss to a community.
- The offence brought disrepute to a government agency or the national government.
- The offence posed a high risk to public health such as bushmeat consumption.
- The offence has inflamed community tension and conflict.
- Where a protected species has been killed as a result of cultural practices e.g., giraffes are killed for their tails, or as a result of a belief in the medicinal value (e.g., pangolin scales being a cure for hysteria).
- Where the impact upon the population of that species is particularly high e.g., certain species of sea turtle can take 35 years before it is ready to reproduce. Elephants take 2 years to gestate. Rhinos only reproduce every four or five years producing one calf at a time.
- Where the impact upon the ecosystem is high as a result of sustained or prolonged poaching either of that particular species (such as elephants) or in that particular area.
- Suffering to the animal e.g., the use of snares is a cruel and indiscriminate practice resulting in a slow and painful death to animals that are caught.

Critical Factors

21. Wildlife trafficking forms part of what is referred to as organized crime. The United Nations Office on Drugs and Crime defines organized crime as:

The most obvious distinction between organized crime and other forms of criminal conduct is that it is “organized.” In general terms, it does not include random, unplanned, individual criminal acts. Instead, it focuses exclusively on planned, rational acts that reflect the effort of groups of individuals. Several efforts have been made to elicit common elements to describe and define organized crime with greater specificity.

A list of all the crimes committed by organized criminal groups would be outdated quickly as social, political and technological changes result in changing opportunities for crime in different locations...

There are many definitions of organized crime. Analysis reveals that several characteristics of organized crime are common among these definitions (Albanese, 2016; Finckenauer, 2005; Hagan, 1983; Maltz, 1985). These characteristics include the purpose of organized crime to financially profit through crime.



- Organized crime mainly responds to public demand for services. Corruption is an enabler that protects organized crime operations.¹
22. Courts have a role to play in the protection of wildlife and in stopping the activities of organized crime in wildlife trafficking. A report titled, “Analysis of Judicial Proceedings Relating to Wildlife Offences in the Courts of the Republic of Congo (2008 – 2017)”,² highlighted the important role of courts.
 23. Kiprono, Eric and Haron were found in possession of elephant tusks. Elephants are listed in CITES as endangered species. It is a known fact that the demand for elephant tusks is driven by forces outside the borders of Kenya or indeed by foreigners. For the tusks to have been the way they were found, based in the expert evidence presented by Dr. Mwebi from the National Museums of Kenya, three elephants died. There is an element of poaching. According to Dr. Mwebi’s expert opinion, the elephant tusks were freshly cut.
 24. The importance of the judiciary in adjudicating in crimes involving wildlife is highlighted in an article titled, “The Role of the Judiciary in the Conservation of Wildlife in India” written by Ms. Medha Pushkarna and Mr. Rupendra Singh. The article was published in *The Journal of Emerging Technologies and Innovative Research – JETIR*, Volume 11, Issue 4³.
 25. The principles in the paper are applicable in Kenya. The authors state:

Firstly, the judiciary acts as a guardian of environmental legislation, interpreting and enforcing laws that safeguard wildlife habitats, species, and ecosystems. Through landmark judgments and legal precedents, courts have affirmed the fundamental rights of wildlife and upheld the principles of sustainable development. By holding governments and industries accountable for environmental degradation, the judiciary fosters a culture of responsibility towards biodiversity conservation...

In addition, the judiciary plays a crucial role in upholding international agreements and treaties aimed at protecting wildlife and biodiversity. By incorporating principles of international law into domestic jurisprudence, courts contribute to the global effort to combat transboundary threats to wildlife, such as habitat loss, climate change, and wildlife trafficking. Through judicial cooperation and mutual assistance, courts enhance the effectiveness of international conservation initiatives and promote cross-border collaboration in wildlife protection...
 26. All the above is to state that this court aligns itself with the vision of protecting Kenya’s wildlife.
 27. Before concluding, I wish to rely on a decision on time spent in pre-trial detention by Justice Reuben Nyakundi in *Hussein Wanjala Wekesa v Republic* [2021] eKLR. The trial found the appellant guilty after trial and sentenced him to the minimum sentence of seven years as prescribed in section 92(2) of the *Wildlife Conservation and Management Act*, 2013. Dissatisfied, the appellant moved to the High Court where one of the grounds was the trial court did not take into consideration the time he spent in pre-trial detention. Justice Nyakundi said:

The appellant challenged the sentence that its minimum mandatory nature makes it inappropriate considering the fact that he is a first offender, elderly and ailing. The offence is serious and the fact that an offence is punished by a minimum mandatory sentence does not make the sentence stiff. In

¹ See <https://www.unodc.org/e4j/ru/organized-crime/module-1/key-issues/defining-organized-crime.html#:~:text=The%20most%20obvious%20distinction%20between,effort%20of%20groups%20of%20individuals.>

² Available at file:/C:/Users/User/Documents/JKIA/Wildlife%20Trafficking/Analysis%20of%20Judicial%20Proceedings%20in%20Courts%20-%20Congo%202008-2017.pdf

³ Available at file:/C:/Users/User/Documents/JKIA/Wildlife%20Trafficking/JETIR2404227.pdf



sentence circumstances, a minimum mandatory sentence may even be too lenient considering peculiar circumstances of each case.

Given the circumstances of the case, I do find that the sentence of seven (7) years imprisonment imposed by the learned trial magistrate cannot be said to be harsh and excessive considering the value of the wildlife trophy involved. The sentence imposed by the learned magistrate stands.

On the question of pre-trial sentence, I hereby side with the appellant that the one year and 2 months he spent in remand custody be taken into account in terms of Section 333(2) of the Criminal Procedure Code, Laws of Kenya.

In light of the foregoing, I do find that the appeal on conviction is hereby dismissed for it is without merit.

The appeal against sentence partially succeeds, particularly on the question of pre-trial sentence. The appellant is hereby sentenced to seven years imprisonment computed from the date of his arrest.

It is ordered.

28. I find myself guided by the views above by Justice Nyakundi in taking into account the time spent by all three accused persons, including Haron because he was out very briefly before the trial ended and the court delivered its judgment.

Determinants of Sentencing

29. In reaching a decision on sentencing, I have considered the following:
- a. Section 92(4) of the *Wildlife Conservation and Management Act* whose penalty is mandatory minimum sentence.
 - b. The mitigation by Mr. Lusweti for Kiprono, Eric and Haron.
 - c. The Pre-Sentence Reports.
 - d. The Sentencing Guidelines and in relation to both counts, the court takes into account the following factors:
 - Elephants are a particular driver of tourism or other economic benefit to Kenya.
 - Elephants are a protected species under Kenyan law or international agreement to which Kenya is party, such as the Convention on International Trade in Endangered Species (CITES). The offence was committed for commercial purposes with a high value, whether realised or not.
 - A protected species was actually killed.

Sentencing

30. Therefore, Kiprono, Eric and Haron are sentenced as follows:
They are sentenced to five (5) years in prison. The sentence starts to run from the date of their arrest. They have 14 days right of appeal.

Exhibits

31. In line with section 105(1) of the *Wildlife Conservation and Management Act*, 2013 the elephant tusks – Exhibit 2 - produced as an exhibit in this case is forfeited to Kenya Wildlife Service.
32. Additionally, in line with section 105(1) of the Wildlife Conservation and Management, 2013 the motorcycle – KMEF 189Z produced as Exhibit 15 is forfeited to the Kenya Wildlife Service.



Surety

- 33. The surety who stood in for Haron is discharged. Let the security document deposited in court be returned back to him. Any caveat/restriction is lifted now that the case is concluded.
- 34. It is so ordered.

DATED, SIGNED AND DELIVERED AT JKIA LAW COURTS THIS 1ST DAY OF JULY 2025.

NJERI THUKU

SENIOR PRINCIPAL MAGISTRATE

In the presence of: -

-Court Assistant
-State Counsel
-Defence Counsel
-1st Accused
-2nd Accused
-3rd Accused
- Language

