

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT CHUKA
MISC. CRIMINAL APPLICATION NO. E040 OF 2024

LUKA NJAGI.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT

R U L I N G

1. Luka Njagi was the 3rd Accused in Chuka Chief Magistrate's Court Criminal Case No. 937 of 2017. He was charged alongside Miandaka Mbiuki (1st accused) and Patrick Muthuri Kinyamu (2nd accused) with the offence of being in possession of wildlife trophies without permit contrary to section 95 of the Wildlife Conservation and Management Act 2013.
2. They faced a second count of dealing with Wildlife Trophies relating to an endangered species without a permit contrary to **Section 95 of the Wildlife Conservation and Management Act 2013**. It was

alleged that on the 28th November 2017 the three accused persons were found in possession of and dealing with 14 elephant tusks weighing 58 kilograms at Lenana Hotel in Chogoria Town without a permit issued under the Act and the trophies for which they had no permit issued under the Act relates to an endangered species as specified under Schedule 6 of the Act.

3. The trial court sentenced the three accused to a fine of Kshs one million and in default to serve one year imprisonment.

4. Dissatisfied with the sentence the State through the ODPP filed a revision application to the high court. The State urged that the sentence was illegal for being manifestly low. They stated that **Section 92 of the Wildlife Conservation and Management Act** provided the fine to be imposed should not be

less than twenty million a jail term of life imprisonment or both.

5. In a ruling dated 17th December 2020 Gitari J. allowed the revision, set aside the sentence imposed by the trial court and sentenced the accused to a fine of one million (Kshs.1,000,000/-) and in default one year imprisonment and in addition a prison term of 6 years each.

6. Subsequent to the DPP's Application, the Applicants filed a revision application seeking that their sentence be revised. On 10th February 2023, Gitari J. ruled that she had no jurisdiction to entertain a further revision having dealt with the earlier revision No.E001/2020.

7. Luka Njagi (Applicant) has now filed the current Application dated 17th April 2024 seeking that his motor cycle registration No. KMCT 164 which was detained as an exhibit in the case be returned to

him. He cites section 177 and section (21) (i) and 366 of the Criminal Procedure Code.

8. The Applicant filed submissions dated 31st July 2025.

He stated that he had completed his sentence and wished to pursue the return of his motorcycle which had been confiscated and treated as an exhibit in the case. He submitted that the motorcycle was his personal property and that the trial court did not make any contrary order regarding its disposal and that therefore there was no lawful basis for its continued detention. He relied on the case of *Republic vs. Njoroge* [1947] EACA 67.

9. The Application was opposed by the Respondent. In submissions dated 28th April 2025, the Respondents submitted that the trial court was seized of the Jurisdiction to order the disposal of the exhibit. They relied on the case of **Republic Vs. Everlyne Wamunyu Ngumo [2016] eKLR.**

10. The Respondents further submitted that the trial court exercised its discretion at sentencing and ordered forfeiture of the exhibit. That the Applicant did not show any mistake illegality or impropriety to warrant this court's exercise of its revisionary power. They urged that the Application be dismissed.

Analysis and determination

11. The Applicant seeks the return of his motor cycle which he states, was an exhibit in the trial and for which the trial court did not order forfeiture. The Respondent on the other hand submitted that the said motor cycle was forfeited to the State.

12. As required by law and in exercise of this court's revisionary jurisdiction provided under section 362 of the Criminal Procedure Act, I called for and perused the trial record. Section 362 provides:-

“362. The High Court may call for and examine the record of any criminal

proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

13. Section 177 of the Criminal Procedure Code which the Applicant relied on provides:-

“177. Where, upon the apprehension of a person charged with an offence, any property is taken from him, the court before which he is charged may order -

(a) that the property or a part thereof be restored to the person who appears to the court to be entitled thereto, and, if he be the person charged, that it be restored

either to him or to such other person as he may direct; or

(b) that the property or a part thereof be applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.”

15. Section 366 of the Criminal Procedure Code in which the Applicant further cited provides:-

“366. All proceedings before the High Court in the exercise of its revisional jurisdiction may be heard and any judgment or order thereon may be made or passed by one judge:

Provided that when the court is composed of more than one judge and the court is equally divided in opinion, the sentence or

order of the subordinate court shall be upheld.”

16. My perusal of the record revealed that contrary to the Applicant’s submission that the motor cycle KMCT 164 P was not forfeited, the court stated at page 9 of the Judgement as follows:-

“ The court shall order that the 14 pieces of elephant tusks weighing 58 kilograms be forfeited to the Director, Kenya Wildlife Service, and Motor Cycle KMCT 164 P shall also be forfeited.”

17. With respect to whether the forfeiture was lawful, section 105 of the Wildlife Conservation and Management Act provides:-

(1) The court before which a person is charged for an offence under this Act or

any regulations made thereunder may, in addition to any other order—

(a) upon the conviction of the accused;

or (b) if it is satisfied that an offence was committed notwithstanding that no person has been convicted of an offence, order that the wildlife trophy, motor vehicle, equipment and appliance, livestock or other thing by means whereof the offence concerned was committed or which was used in the commission of the offence be forfeited to the Service and be disposed of as the court may direct.

(2) In making the order of forfeiture under subsection **(1)** the court may also order that the cost of disposing of the substance, motor vehicle, equipment, appliance, livestock or any other thing provided for in

that subsection be borne by the person convicted there-under.(3)The court may further order that any licence, permit or any authorization given under this Act, and to which the offence relates, be cancelled.

(Underline mine)

17. From the above and the trial proceedings which I have also considered, I find nothing unlawful or unprocedural about the forfeiture. It was part of the lawful sentence imposed on the accused.

18. I have come to the conclusion that the application lacks merit and is dismissed.

Orders accordingly.

**Ruling delivered, dated and signed at Chuka this
28th day of April, 2026.**

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Applicant acting in person and Ms Rukunga for the Respondent; Muriuki (Court Assistant).

ORIGINAL