



**Karisa v Republic (Criminal Appeal E006 of 2024)
[2025] KEHC 5217 (KLR) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 5217 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL APPEAL E006 OF 2024
AN ONGERI, J
MARCH 26, 2025**

BETWEEN

DANCAN MAITHA KARISA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the conviction and sentence by Hon. A. M. Obura
(CM) in Voi Criminal Case No. E348 of 2022 delivered on 13th March 2024)*

JUDGMENT

1. The Appellant was sentenced to 7 years imprisonment for the offence of dealing in Wildlife Trophy of an endangered species contrary to Section 92(3) of the *Wildlife Conservation and Management Act* (WCMA) and Management act 2023.
2. The prosecution evidence in brief was that the Appellant was found dealing with five (5) pieces of elephant tusks weighing 7.7kgs without a permit or any lawful exemption.
3. PW2 received intelligence reports that the Appellant was looking for potential buyers of the elephant tusks. PW1 and PW3 posed as potential buyers and they arrested the Appellant and recovered the tusks.
4. The Appellant said in his defence that on the day he was arrested, he was walking home upon closing his motor cycle mechanics business along Kasigau Road when he was suddenly confronted by two people who stopped him and said they were waiting for him.
5. The Appellant asked them what was wrong and raised an alarm. He saw a wildlife works vehicle nearby and he was forced to enter the vehicle to the KWS offices where he saw the elephant tusks.
6. The trial court found the Appellant guilty as charged and sentenced him to seven (7) years imprisonment.



7. The Appellant has appealed on the following grounds:-
- i. That the learned Magistrate erred in law and in fact in failing to find and rule that the evidence adduced by the prosecution was insufficient to sustain the conviction and sentence of the Appellant in convicting the Appellant herein against the weight of the evidence adduced.
 - ii. That the trial court misdirected itself in law and fact in convicting the Appellant yet the Cyber Crime report exonerated the Appellant from the dealings.
 - iii. The learned trial Magistrate erred in both fact and law considering the evidence adduced by prosecution full of gaps.
 - iv. That the trial Magistrate erred in law by not appreciating and disregarding the evidence of the defence throughout the case.
 - v. That the learned trial Magistrate erred in law and procedure by shifting the burden of proof from the prosecution to the defence.
 - vi. That learned trial Magistrate erred in law and fact in wholly premising her finding and conviction on her own personal views and opinions which were neither supported by the evidence before her nor the applicable law.
 - vii. That in whole the finding and holding of the learned trial Magistrate as contained in her judgment delivered on 13th March 2024 and sentence on 20th March 2024 is inconsiderate, erroneous, unlawful biased and untenable in law.
 - viii. That the learned trial Magistrate erred in law in convicting the Appellant on poor investigation adduced by prosecution.
 - ix. The learned trial Magistrate erred in both law and fact by convicting the Appellant to 7 years imprisonment without considering his reasonable defense.
8. The parties filed submissions as follows:-
9. The appellant submitted that he is appealing against his conviction and sentence for the offence of dealing in wildlife trophies of an endangered species.
 10. That the trial magistrate erred in convicting the appellant despite insufficient evidence to prove guilt beyond a reasonable doubt.
 11. That the magistrate failed to consider a cyber-crime report that exonerated the appellant from any dealings related to the wildlife trophies.
 12. Further, that the prosecution's evidence was full of gaps and inconsistencies.
 13. The appellant also submitted that the trial magistrate ignored the evidence presented by the defence and wrongly shifted the burden of proof from the prosecution to the defence.
 14. Further, that the magistrate based her decision on personal opinions rather than the evidence and applicable law.
 15. Finally, that the conviction was based on a poorly conducted investigation.
 16. The appellant argued that the prosecution failed to meet the standard of proof "beyond a reasonable doubt," as required in criminal cases. The appellant cited several legal precedents, including



Woolmington v DPP and Miller v Minister of Pensions, to emphasize that the prosecution must prove guilt conclusively.

17. The appellant highlighted that a cyber-crime report, which analyzed his phone logs and messages, found no evidence connecting him to the wildlife trophies. Despite this, the magistrate convicted him.
18. The appellant further argued that the prosecution failed to prove that he had physical control or knowledge of the wildlife trophies, which are essential elements of the charge.
19. Further, that his defence, including his testimony and that of his witness, was disregarded by the trial court. He maintains that he was falsely accused and that there was no evidence linking him to the crime.
20. He also contended that the trial magistrate improperly shifted the burden of proof to him, requiring him to prove his innocence rather than requiring the prosecution to prove his guilt.
21. The appellant concluded by reiterating that the prosecution failed to prove its case beyond reasonable doubt. He requests the High Court to quash the conviction and set him free, as the trial court's decision was based on insufficient evidence and legal errors.
22. The Respondent opposed the Appellant's appeal against both the conviction and the sentence and stated that the Appellant was convicted of dealing in wildlife trophies (elephant tusks) under Section 92(2) of the *Wildlife Conservation and Management Act* (2013) and sentenced to 7 years imprisonment.
23. The Respondent cited the case of Okeno vs. Republic [1972] in emphasizing that the first appellate court must re-evaluate the evidence, draw its own conclusions, and consider the trial court's advantage in observing witnesses.
24. The Respondent argued that the prosecution proved the Appellant's guilt beyond reasonable doubt. The key elements of the offence under Section 92(2) were satisfied:
 1. Dealing in wildlife trophies. That the Appellant was found in possession of elephant tusks and attempted to sell them.
 2. Endangered species. That the tusks were confirmed to be from elephants, an endangered species.
 3. Lack of ownership certificate. That the Appellant had no permit or certificate for the tusks.
25. The Respondent refuted the Appellant's claim of a frame-up, noting that the defence witnesses' testimonies were contradictory and lacked credibility.
26. The Respondent also dismissed the Appellant's reliance on a cyber-crime report, arguing that it does not exonerate him and that the prosecution's evidence was overwhelming.
27. The Respondent argued that the 7-year sentence is appropriate and within the legal framework of Section 92(2) of the *Wildlife Conservation and Management Act*, which prescribes a minimum of 7 years imprisonment.
28. That the trial court considered mitigating factors, the seriousness of the offence, and the need for deterrence before imposing the sentence.
29. The Respondent cited the case of Bernard Kimani Gacheru vs. Republic [2002] eKLR, stating that an appellate court should not interfere with a sentence unless it is manifestly excessive, based on wrong principles, or overlooks material factors.



30. The Respondent urge the court to uphold both the conviction and the sentence, dismissing the Appellant's appeal.
31. The Respondent relied on several legal precedents, including *Karanja v Republic* [1983], *Ndeka v Republic* [2022], and *Bernard Kimani Gacheru vs. Republic* [2002], to support their arguments.
32. In summary, the Respondent maintained that the conviction was proper, the sentence was justified, and the appeal should be dismissed.
33. This being a first appeal, the duty of the first appellate court is as stated in the case of *Selle v Associated Motor Boat Co.* [1968] EA 123 where the Court of Appeal held that:

“The first appellate court has a duty to re-evaluate the evidence presented before the trial court and arrive at its own independent conclusion. The appellate court must subject the entire evidence to a fresh scrutiny and draw its own inferences. While the appellate court should consider the trial court's findings, it is not bound by them and must form its own independent judgment”.
34. The issues for determination are as follows:-
 - i. Whether the prosecution proved the guilt of the Appellant to the required standard.
 - ii. Whether the appeal should be allowed.
35. It is the duty of the prosecution in a criminal case to prove the guilt of the accused beyond a reasonable doubt. This is a well-established principle in criminal law, as highlighted in cases such as *Woolmington v DPP* and *Miller v Minister of Pensions*(supra).
36. The Appellant argued that the prosecution failed to meet this standard, citing gaps and inconsistencies in the evidence. Specifically, the Appellant relied on a cyber-crime report that allegedly exonerated him from any involvement in the illegal trade of wildlife trophies.
37. However, there is evidence that the Appellant was found in possession of five (5) pieces of elephant tusks weighing 7.7 kgs. Elephant tusks are classified as wildlife trophies of an endangered species under the *Wildlife Conservation and Management Act* (WCMA).
38. The Appellant did not have a permit or any lawful exemption to possess or deal in the tusks.
39. PW2 received intelligence that the Appellant was looking for potential buyers for the tusks. PW1 and PW3 posed as buyers and arrested the Appellant, recovering the tusks in the process.
40. The prosecution argued that these elements satisfied the requirements of Section 92(2) of the WCMA, which criminalizes dealing in wildlife trophies of endangered species without a permit.
41. The Appellant claimed that he was framed and that he was not involved in any illegal trade. He testified that he was walking home after closing his motorcycle repair business when he was confronted by two individuals who forced him into a vehicle and took him to the Kenya Wildlife Service (KWS) offices, where he saw the tusks for the first time.
42. The Appellant also relied on a cyber-crime report that analyzed his phone logs and messages, which allegedly found no evidence linking him to the tusks or any illegal trade.
43. The Appellant argued that the trial magistrate shifted the burden of proof to him, requiring him to prove his innocence rather than requiring the prosecution to prove his guilt beyond a reasonable doubt.



44. The trial court found the Appellant guilty based on the prosecution's evidence, particularly the possession of the tusks and the lack of a permit. The court sentenced the Appellant to 7 years imprisonment, which is the minimum sentence prescribed under Section 92(2) of the WCMA.
45. The trial court dismissed the Appellant's defense, including the cyber-crime report, and found that the prosecution had proven its case beyond a reasonable doubt.
46. I find that the Appellant was found in possession of elephant tusks. The tusks were from an endangered species and he had no permit or certificate for the tusks.
47. The prosecution's evidence that the Appellant was found in possession of elephant tusks is strong. The tusks were recovered during the arrest, and the Appellant did not have a permit to possess them. This satisfies the first element of the offense under Section 92(2) of the WCMA.
48. The tusks were confirmed to be from elephants, which are an endangered species. This satisfies the second element of the offense.
49. The Appellant did not have a permit or any lawful exemption to possess or deal in the tusks. This satisfies the third element of the offense.
50. The Appellant's reliance on the cyber-crime report is not sufficient to exonerate him. The report analyzed phone logs and messages but did not directly address the possession of the tusks or the circumstances of the arrest. The prosecution's evidence of possession and lack of permit remains compelling.
51. I find that the trial court did not improperly shift the burden of proof to the Appellant. The prosecution presented sufficient evidence to prove the Appellant's guilt, and the burden of proof remained with the prosecution throughout the trial.
52. I also find that the 7-year sentence is within the legal framework of Section 92(2) of the WCMA, which prescribes a minimum of 7 years imprisonment. The trial court considered mitigating factors and the seriousness of the offense before imposing the sentence.
53. The prosecution proved the Appellant's guilt beyond a reasonable doubt. The evidence of possession, the endangered status of the tusks, and the lack of a permit are sufficient to sustain the conviction.
54. The Appellant's grounds of appeal, including the reliance on the cyber-crime report and the claim of insufficient evidence, do not outweigh the prosecution's case.
55. The sentence of 7 years imprisonment is appropriate and within the legal framework.
56. The appeal is accordingly dismissed and the conviction and sentence are upheld.
57. The Appellant has a right to appeal to the Court of Appeal within 14 days if he is dissatisfied with this judgment.

DATED, SIGNED AND DELIVERED THIS 26TH OF MARCH 2025 IN OPEN COURT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistants: Maina/Millicent

