



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Republic (Criminal Appeal E143 of 2024)
[2025] KEHC 3768 (KLR) (25 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3768 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E143 OF 2024
DR KAVEDZA & DR KAVEDZA, JJ
MARCH 25, 2025**

BETWEEN

PAUL MARANU MWANGI APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. Maroro (P.M) on 24th October 2024 at Kibera Chief Magistrate's Court
Criminal Case No. 3412 of 2015 Republic vs Paul Maranu Mwangi & 2 Others)*

JUDGMENT

1. The appellant Paul Maranu Mwangi was jointly with others not before this court charged and convicted on two counts of offences namely: Being in possession of wildlife trophy contrary to section 95 of the Wildlife Conservation and Management Act 2013 and dealing in Wildlife Trophy Contrary to section 84(1) as read with section 92 of the *Wildlife Conservation and Management Act, 2013*. He was sentenced to pay a fine of Kshs. 1 million in default to serve 5 years imprisonment in count I, and a fine of Kshs. 20 million in default to serve life imprisonment. The sentences were to run consecutively.
2. Aggrieved, the appellant filed the present appeal challenging his conviction and sentence. The appellant raised 12 grounds which have been coalized as follows: The appellant challenged the totality of the prosecution's evidence against which he was convicted. The appellant complained that the prosecution failed to call crucial witnesses. Further, the defence was not considered and the sentence imposed was harsh and excessive. He urged the court to quash the conviction and set aside the sentence imposed.
3. Before grappling with the grounds of appeal aforesaid, I am mindful that the first appellate court is under duty to re-evaluate the evidence presented at trial and draw its own independent conclusions. Except, it must bear in mind that it neither saw nor heard the witnesses give their testimonies. Thus, matters of demeanour are best observed by the trial court. (See *Okeno vs. Republic* [1972] E.A 32.)



4. Assistant Warden Said Kurera (PW4) testified that he received information from Abdi Hassan regarding individuals dealing in wildlife trophies near the Rio Hotel in Nairobi West. He was provided with a description of two suspects. Upon arrival at the scene around 10:30 AM, he observed three individuals matching the given description. He also noticed that they were carrying a green paper bag containing what appeared to be ivory. As they approached the suspects, one individual fled while the officers attempted to verify the contents of the bag.
5. During cross-examination, PW4 stated that the second accused, Lawrence Kinoti, was the one carrying the bag. He further noted that the suspects were walking away from the Rio Hotel. However, he could not directly link the third accused, Kipkoech Cheruiyot, to the recovered ivory. Despite some commotion during the arrest, no alarm was raised.
6. Corporal Abdul Ali Abdi (PW5) testified that intelligence reports indicated three men were involved in selling ivory at the Rio Hotel. He received descriptions of the suspects—one tall and two short, with one wearing goggles. While one suspect escaped, two were apprehended, and the third was later arrested in Kangeta.
7. Under cross-examination, PW5 admitted that no forensic analysis, such as dusting for fingerprints or reviewing CCTV footage, was conducted to place the accused at the crime scene. He also confirmed that no investigations were carried out on their mobile phones. The third accused was implicated solely by statements from the first and second accused.
8. Chief Inspector Charles M'noti (PW6) stated that Kenya Wildlife Service (KWS) officers received intelligence regarding the sale of ivory at the Rio Hotel. He prepared an exhibit memo and retained custody of the items. During cross-examination, he admitted that while an inventory was made at KWS headquarters, he neither signed it nor recorded witnessing its preparation.
9. PW2 testified that on 14th August 2015, Inspector Weru instructed him to escort the third accused to the nearest KWS office without explanation. The accused was taken to the Meru National Park office and then booked at Maua Police Station under OB no. 44/14/8/2015 at 2:50 PM. PW3 corroborated PW2's testimony.
10. PW1, Esther Nguta, an exhibits analyst, testified that she received the exhibits from Chief Inspector Charles M'noti of KWS. Her task was to confirm whether the items received were elephant tusks. Her report was admitted as prosecution exhibits confirming that they were ivory.
11. In his defence, the appellant testified that he and the second accused had travelled to Nairobi to secure a loan and were advised to stay until 11th August 2015. He stated that they were arrested near Nyayo Stadium while heading to Nairobi West. He denied witnessing any inventory being taken or possessing any trophies and sought acquittal. During cross-examination by counsel for the third accused, he reaffirmed that he had no trophies, had never mentioned the third accused, and that no one fled the scene.
12. The second accused adopted the appellant's testimony. Under cross-examination, he confirmed that only he and the appellant were present and that the third accused was not at the scene.
13. The third accused testified that on the 10th and 11th of August, he was at work in Kangeta and had no association with the appellant and the second accused during the material dates. He presented documents to support his defence, but despite summons, the author of the documents did not appear in court.
14. The trial court found the appellant and the two co-accused guilty and sentenced them accordingly.



15. The appeal was canvassed by way of written submissions which have been duly considered.
16. The appellant was charged with the offence of being in possession of a wildlife trophy contrary to Section 95 of the Wildlife Conservation and Management Act 2013 which provides as follows:

“Any person who keeps or is found in possession of a wildlife trophy or deals in a wildlife trophy, or manufactures any item from a trophy without a permit issued under this Act or exempted in accordance with any other provision of this Act, commits an offence and shall be liable upon conviction to a fine of not less than one million shillings or imprisonment for a term of not less than five years or to both such imprisonment and fine.”
17. Accordingly, elements of the offence to be proved are:
 - i. Possession of a trophy
 - ii. Lack of a permit or exemption under the Act
18. The prosecution adduced evidence to establish that the appellant, jointly with others, was found in possession of wildlife trophies, contrary to Section 95 of the *Wildlife Conservation and Management Act*. PW4, an Assistant Warden, testified that he received intelligence regarding individuals engaged in the illegal trade of ivory near the Rio Hotel. Upon arrival, he observed three suspects, including the appellant, while another individual fled. PW5, a police officer, corroborated this intelligence, stating that three men were reportedly in possession of ivory. PW6, a Chief Inspector, confirmed the preparation of an inventory of the recovered items but admitted under cross-examination that he neither signed nor witnessed its preparation. This evidence formed the basis for the prosecution’s case that the appellant was found in possession of suspected ivory.
19. PW1, an exhibits analyst, confirmed that the seized items were indeed ivory. The appellant, alongside his co-accused, denied possession of the trophies. However, the appellant failed to provide a reasonable explanation for his presence at the scene or how the trophies came into his possession. Furthermore, he did not demonstrate that he possessed a permit or lawful exemption to justify having the items. His failure to offer a credible defence further reinforced the prosecution’s case.
20. The prosecution’s evidence was clear, cogent, and devoid of inconsistencies, leaving no room for doubt as to the appellant’s culpability. The chain of events was complete, unbroken, and pointed unequivocally to the appellant’s guilt. The prosecution therefore proved its case beyond reasonable doubt with respect to Count I.
21. Regarding Count II, the appellant was charged with dealing in wildlife trophies contrary to Section 84(1), as read with Section 92 of the *Wildlife Conservation and Management Act*, 2013. To secure a conviction under this provision, the prosecution was required to prove beyond reasonable doubt that the appellant was engaged in the unlawful trade of wildlife trophies. The circumstantial evidence adduced must form a chain so complete that it leads to the inescapable conclusion that the accused, and no other person, committed the offence.
22. A review of the prosecution’s case demonstrates that these elements were satisfied. The appellant was placed at the scene, and the essential ingredients of the offence were established. The wildlife trophies in question were confirmed as genuine ivory by PW1. Additionally, the prosecution provided evidence that the appellant lacked a dealer’s licence or any lawful authorisation to engage in trade involving wildlife trophies.



23. Dealing in wildlife trophies consists of two key elements: possession and knowledge. To secure a conviction, the prosecution must prove that the accused had physical control over the item and was aware both of its presence and its prohibited nature. Although the appellant was not caught in the act of selling the ivory, proof of possession sufficed to establish the offence of dealing. The possession of ivory, coupled with the absence of lawful authorisation, constituted sufficient proof of the offence.
 24. Accordingly, the prosecution met the requisite legal threshold to warrant a conviction. The appellant's conviction on Count II is therefore affirmed.
 25. On conviction, the appellant was sentenced to pay a fine of Kshs. 1 million in default to serve 5 years imprisonment in count I, and a fine of Kshs. 20 million in default to serve life imprisonment. The sentences were to run consecutively.
 26. During the sentencing, the court considered the pre-sentence report on record, that he was a first offender and the applicable law.
 27. For the foregoing reasons, this court hereby declines to interfere with the sentence of the trial court. The appeal is found to be lacking in merit and is dismissed in its entirety.
- Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 25TH DAY OF MARCH 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mutuma for the Respondent

Tonny Court Assistant.

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