



**Ketu & another v Republic (Criminal Revision E094 of 2025)  
[2025] KEHC 9375 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 9375 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CRIMINAL REVISION E094 OF 2025**

**TM MATHEKA, J**

**MAY 30, 2025**

**BETWEEN**

**ALEX MUTHUSI KETU ..... 1<sup>ST</sup> APPLICANT**

**PETER MUSEMBI NTHUKU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. This is a revision sent to this court by the Head of Station Makindu Law Courts.
2. For purposes of clarity - there are two persons who were charged in Makindu CMCR E949/2023 with dealing in carcass/meat of wildlife species contrary to section 98(1) of the *Wildlife Conservation and Management Act* 2013. Particulars are that on the 6th day of November, 2023 at around 1500hrs at Makindu Super Market, Kiu Sub location, Makindu Location in Makindu Sub county within Makueni County, Alex Muthusi Ketu, Peter Musembi Nthuku were jointly found dealing in carcass/meat of suspected wildlife species namely giraffe weighing approximately 6 kgs without Authority from the Kenya Wildlife Service Director General.
3. There is a committal warrant in the file showing that the 1st accused and Alex Muthusi Ketu was convicted and sentenced to pay fine of Kshs. 200,000 in default to serve 2 years' imprisonment on 15/2/2024.
4. The record shows that this conviction and sentence happened without trial or proper plea.
5. The charges were read to the accused persons on 7/11/2023. The 1st accused pleaded guilty. The investigating officer gave testified to produce the meat as exhibit - as it was perishable exhibit.
6. The record shows that prosecutor sought 2 weeks to have "the report presented", facts for the 1st accused, and pre-trial for 2nd accused. This was set for 23/11/2023.



7. The accused were not produced on that date and on 30/11/2023, the prosecutor did not have their file, and on 21/12/2023 again, the prosecution file was not availed. On 1/2/2024, the police file was still missing, and summons were issued for Investigating Officer.
8. On 15/2/2024 the court was told by one Joshua, that there was both a pre-bail and pre-sentence report.
9. The 1st accused person sought forgiveness from court stating that a customer had left a box in his place of work whose contents he did not know.
10. He was sentenced by the Hon. Ileri SPM proceeded to sentence him.
11. The bond for his co-accused was reduced to Kshs. 100,000 with one surety of similar amount. He appears not to have been able to raise bond.
12. When Hon. Shikanda SPM took over the matter on 29/8/2024 he noted the anomaly and sent the file for revision.
13. The powers of the High Court on revision are set out by Article 165 (6) & (7) of the Constitution and under Section 362, 364 of Criminal Procedure Code.
14. Section 362 of the Criminal Procedure Code is Instructive. Power of High Court to call for records  
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
15. From the record it is evident that the trial court did not conduct plea as required by section 207 of the Criminal Procedure Rule and *Aden v R.* [1973] EA 445
16. There was no order of conviction against the accused before the sentence was pronounced.
17. That proceedings were irregular; the sentence was illegal as it was not based on any conviction.
18. In the circumstances the sentence is set aside. The accused persons Alex Muthusi Ketu And Peter Musembi Nthuku be escorted to Makindu Police Station to be presented before the Head of Station Makindu, not more than 7 days hereof.
19. The learned Magistrate to determine the appropriate manner to dispose of the matter, taking into consideration the period the subject has spent in custody.
20. Order be served upon the officer in Charge Makueni GK Prison for compliance. The Deputy Registrar to ensure that service is effected.
21. The Deputy Registrar to ensure that the lower court file is returned to Makindu Law Courts for necessary action.
22. This file be placed before the Deputy Registrar on 3rd June 2025 for actions above.
23. Orders accordingly

**DATED, SIGNED AND DELIVERED VIA CTS THIS 30<sup>TH</sup> MAY 2025**

**MUMBUA T. MATHEKA**

**JUDGE**

