



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NYERI**

**Criminal Appeal 130 of 2007 & 131 of 2007 (Consolidated)**

**SAMUEL MACHARIA MWANGI ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

***CONSOLIDATED WITH***

**HIGH COURT CRIMINAL APPEAL NO. 131 OF 2007**

**STEPHEN GICHURU NJAGWARA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

***(Appeal from original Conviction and Sentence in the Chief Magistrate's Court at Nyeri in Criminal Case No. 587 of 2006 by R. Nyakundi – C.M.)***

**J U D G M E N T**

The two appellants, **Samuel Macharia Mwangi** and **Stephen Gichuru Njagwara** whose appeals I have consolidated for ease of hearing and as they arose from the same trial were charged with three offences.

**Count 1 – Poaching without authority contrary to Section 34(1) (b) (v) of the Wildlife Conservation and Management Act Cap 376 Laws of Kenya.**

**Count II – Being in possession of game trophy contrary to Section 39(7) of the Wildlife conservation and Management Act Cap 376 Laws of Kenya.**

**Count III – Trespass upon private land contrary to Section 3(1) of the Trespass Act Cap 294 Laws o Kenya.**

The brief facts of the case are that on the 6<sup>th</sup> day of November 2005, Kenya Wildlife Service Rangers were on patrol within Ragati forest when they heard dogs barking. They went in the direction that the dogs were barking from and found about 2 men slaughtering a Buffalo. They arrested them and recovered a spear, 2 pangas, a snare and 2 bags. They escorted the two persons who turned out to be

the appellants to the Police station and handed them over together with the exhibits. The appellants were subsequently charged with the offences aforesaid. The appellants denied the charges and gave a different version of events. The 2<sup>nd</sup> appellant stated that the 1<sup>st</sup> appellant who is his friend had come to visit him and together they drove the cows out for grazing in Hombe forest. As they approached the Dam, they heard gunshots and suddenly policemen appeared from nowhere and ordered them to sit down. They were ordered to remove their shoes and were subsequently tortured. They were taken to the rangers camp. The Rangers then shot at something in the bush where they were later escorted. They then saw a buffalo dead which they were ordered to chop up and carry the carcass to the police vehicle. They were subsequently charged in court. 1<sup>st</sup> appellant corroborated the evidence of the 2<sup>nd</sup> appellant. After careful consideration of the evidence as a whole the learned magistrate found for the prosecution in respect of count I and II. Upon conviction, the learned magistrate sentenced each of the appellants to ten years imprisonment on each count. She then ordered that the said sentences be served concurrently. The appellants were aggrieved by the conviction and sentence. Hence they lodged the instant appeals which as I have already indicated have been consolidated.

When the appeals came up for hearing, **Mr. Orinda**, learned Senior Principal State Counsel conceded to the same and rightly so. **Mr. Orinda's** concession was on the grounds that the charge sheet did not disclose an offence known under the law even if the provisions of Wildlife conservation and management Act were to be invoked. The charge sheet talked of Poaching whereas the particulars thereof talk of hunting. **Miss Nderitu**, learned counsel who appeared for both appellants wholly associated herself with the submissions of the learned Senior Principal State Counsel.

I have carefully gone over the evidence tendered in support of the prosecution case and I am agreement with the submissions of both **Mr. Orinda** and **Miss Nderitu**. The appellants were found slaughtering a Buffalo. They were however charged with illegal hunting, implying that there are some hunting that are authorised and or legal. The charge sheet is not specific as to whether the appellants were authorised or unauthorised hunters. The charge sheet is also silent as to whether the appellants were hunting illegally and without a licence thereby making them poachers. The appellants perhaps should have been charged under section 47 of the Wildlife Conservation and Management Act. However the application of this section is dependant on the minister making regulations to deal with possession or movement of the game meat. I have looked at the entire Act and I am satisfied that no such regulations have been gazetted by the minister.

Further it is noted that the penalty provided for the offences charged is a fine of Kshs.20,000/= or imprisonment for a term not exceeding three years. However the appellants herein were sentenced to ten years imprisonment each. The sentence imposed as aforesaid was clearly illegal and definitely calls for my intervention.

Arising from the foregoing, it is my conviction that these appeals have tremendous merit. Accordingly I allow each appeal, quash the conviction and set aside the sentences imposed on each appellant. The appellants and each one of them shall be set at liberty forthwith unless otherwise lawfully held.

***Dated and delivered at Nyeri this 29<sup>th</sup> day of January 2009***

**M. S. A. MAKHANDIA**

**JUDGE**



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