

Ivory Possession Lands Single Mother of Five a 5 Year Jail Sentence

There was barely a dry eye in the Kwale courtroom last Monday afternoon, June 10th, 2024, when Augustine Odwori Malingo and Nancy Akoth Owino were sentenced by Principal Magistrate Lillian Lewa. They had been found guilty of possession of wildlife trophies that included 4 ivory tusk pieces weighing 500 grammes and 1 hippo tooth weighing a similar amount from their 2019 arrest.

In a seemingly cruel choice of words, Magistrate Lewa began her sentencing by telling the two accused she was giving them a non-custodial sentence, thereby giving the two accused and the rest of the court the impression that there was going to be no jail time involved. However, that hope was dashed within seconds when the Honourable Magistrate continued by stating that they were being fined 1 million shillings and in default of payment, would spend 5 years in prison. The fine amount was completely unreachable for both so they would be imprisoned for 5 years.

Nancy Akoth, once the realization of the sentence struck home, began sobbing to Magistrate Lewa to please take her children as they were going to become chokoras (street children) or thugs. Akoth's two oldest boys were in court and once the police started leading their mother away, the younger boy fainted in the doorway of the court striking his head hard on the floor causing momentary unconsciousness. When Akoth saw what had happened, she also collapsed, crying out as she did so; "Don't die on me" as she was being dragged towards the holding cell by police. Magistrate Lewa was at this point, in her office, have exited the court immediately on passing the sentence, her last words to the two accused being: "It's the best I can do".

One has but to wonder if that really was the best that Principal Magistrate Lewa or the criminal justice system could have done.

The four ivory tusk pieces weighing 0.5 kg is the smallest amount of ivory seen by this author on a charge sheet outside of Jomo Kenyatta Airport where it is not uncommon for transiting passengers to be found with ivory trinkets.

The value assigned to the seized contraband as per the charge sheet is 100,000 shillings. That is a value placed on the ivory by KWS, essentially 100,000 shillings or \$1000 USD per kilogramme. The value is a very loose approximation of the black market value of ivory in South-East Asia. It does not reflect the actual value in Kenya.

CHARGE SHEET

DATE TO COURT 23/09/2019

COURT FILE NO... 720/19

O.B. NO. 46/20/09/2019

CHRISTIAN NAMES IN FULL OR NAMES 1. AUGUSTINE ODWORI 2. NANCY AKOTH	SURNAME OR FATHER'S MALANGO OWINO	Identity certificate No. N/A	Sex FE MALE	Nationality or Tribe DURUMA	Apparent Age ADULT	ADDRESS (Include District And Location Where Applicable) KWALE
CHARGE	BEING IN POSSESSION OF WILDLIFE TROPHY CONTRARY TO SECTION 95 OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT NO 47, OF 2013 LAWS OF KENYA .					
PARTICULARS OFFENCE (see second schedule of C.P.C.)	1. AUGUSTINE ODWORI MALINGO 2. NANCY AKOTH OWINO:: On 20 th day September, 2019 at around 1530 hours at Kombani area, in Matuga Sub-County Within Kwale County, you were found in possession of wildlife trophy namely four(4) pieces of elephant tusk weighing 500 gms and one(1) hippo tooth weighing 500gms of street value of Kshs 100,000/= without a permit.					
If arrested	Date of arrest	Without or With warrant	Date Apprehension Report to Court	Bond or Bail and Amount	Is Application made for Summons to Issue	
YES	20/09/2019	W/O	23/09/2019	IN CUSTODY	NIL	
Remanded or Adjournd to						
Complainant and Address	STATE THRO; KENYA WILDLIFE SERVICE					
Witnesses..	[REDACTED]					
Sentence ...	CM'S COURT AT KWALE ON 23/09/2019 IF FINE PAID					
Court and Date ...						



Officer in Charge Kwale Police Station

In other words, if the two accused did actually have possession of the ivory and hippo tooth (the planting of evidence happens more than is realized), the amount of money they would have received would have been more in the range of 10,000 shillings or USD \$100. That amount split two ways? The two accused are going to spend 5 years in prison for 5,000 shillings (\$50) worth of wildlife trophies.

The length of time that this matter was before the court must also call the system into question. While this arrest was during COVID time, five years to render a sentence in a matter that had four

prosecution witnesses is certainly counter to the objectives set by Chief Magistrate Martha Koome.

In September 2022, Hon. Lewa ruled there was a case to answer against the defence. It was not until the following July that the accused testified in their defence, and then the following May 2024 before a judgement rendered. The final sentencing took six court sittings spaced over 10 days before the accused learned their fate at 4:45 pm, 15 minutes before the close of business on June 10th. (This is not reflected in the public Judiciary e-filing data base.)

Magistrate Lewa's last word's to the accused regarding sentence: "It's the best that I can do." But was it really the best she could do?

In December 2022, Thomas Muhoro Ngatia, a self-confessed ivory trafficker found with 112 kg of ivory under his bed in 2016, was [sentenced to 2 years imprisonment](#) by Senior Resident Magistrate E. Rianey of Kibera court.

Also in 2022, the Kitale court of Chief Magistrate Julius Ng'arng'ar sentenced Martin Mukesa Juma to [pay a fine of Sh1 million or spend one year in prison in default](#). He had been found with 2 pieces of ivory weighing 4 kg.

This past February in Kahawa court before Senior Principal Magistrate Boaz Ombewa, Joseph Marao Nkooyio and Edward Oinepu Kipaton, were sentenced to pay a [fine of Sh 300,000 or serve one year in prison](#) in default after entering into a plea agreement.

And then we have James Ngala Kassiwa, a KRA officer who in 2022 was handed 2 years jail for his part in a 3.8t ivory shipment. Seven months into his imprisonment, he was [granted a non-custodial sentence](#) for the remaining 17 months, a decision said to be based on his age, health, and family status. (He and one other had been charged under the East African Community Customs Management Act which provided for a maximum sentence of five years jail).

In fairness to Hon. Lewa, the sentence she handed down was in the minimum range of what is presently seen in the Kenya for ivory related offences. But if the picture presented by Nancy Akoth Awino is correct, (which the atypical, free bond release provided her by Kwale court five years previous would tend to suggest is accurate), a single, middle aged woman, with five children, no support or contact with the father, employed and sustaining her family through wages earned by crushing stone, and in possession of Sh 5,000 worth of elephant tusk and hippo tooth pieces, have the interests of justice best been served with a 5 year custodial sentence?

