Case Number:	Criminal Appeal 06 of 2016
Date Delivered:	08 Sep 2016
Case Class:	Criminal
Court:	High Court at Marsabit
Case Action:	Judgment
Judge:	Kiarie Waweru Kiarie
Citation:	Simon Ekial v Republic [2016] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Criminal
History Magistrates:	Boaz M Ombewa - Ag. Principal Magistrate
County:	Marsabit
Docket Number:	-
History Docket Number:	Criminal Case No. 830 of 2014
Case Outcome:	-
History County:	Marsabit
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MARSABIT

CRIMINAL APPEAL NO. 06 OF 2016

SIMON EKIAL.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in Criminal Case No. 830 of 2014 of the

Principal Magistrate's Court at Marsabit by BOAZ M OMBEWA– Ag. Principal Magistrate)

JUDGMENT

The appellant, **SIMON EKIAL**, was charged with an offence of entering into a National Park contrary to section 102 (1) (a) of the Wildlife Conservation and Management Act,2013. He was also charged with a second count of fishing in a National Park contrary to section 102 (1) (f) (g) (h) of the Wildlife Conservation and Management Act, 2013.

He pleaded guilty to the offences. He was then sentenced to pay a fine of Kshs. 200, 000 on each count and in default to serve two years imprisonment.

The particulars of the offences were that on 18th October 2014 at Sibiloi National Park in Marsabit North sub County of Marsabit County, jointly with others entered into Sibiloi National Park without permission and were found fishing in a restricted area.

When he was taken to court, he pleaded guilty to both offences. He was convicted and sentenced.

He now appeals against both the conviction and sentence.

The state opposed the appeal through Mr. Kibet, the learned counsel.

The facts of the prosecution case were briefly as follows:

On the 18. 10.2014, while game rangers were on patrol, they found the appellant in company of others fishing at Sibiloi National Park which is a restricted area. None had permission to be there.

The appellant having pleaded guilty, it is not open to him to raise grounds that touch on facts. He is estopped by section 348 of the Criminal Procedure Act from doing so. It provides:

No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.

In the instant case , I will endeavour to establish the following:

1. Whether the plea was unequivocal,

2. Whether it was in the language the appellant understood,

3. Whether the procedure for taking plea was adhered to; and

4. Whether the sentence meted out was legal or not.

I have perused the original record and the typed copy of proceedings. I have noted that after the appellant pleaded guilty to the offence, the facts were read and he confirmed that they were correct. The plea was unequivocal.

When the appellant and his co accused informed the court that they only understood Turkana language, an interpreter was availed. She is called Angela Lucas. The court communicated with the appellant and his co accused through this interpreter. The appellant cannot be heard to say that he was not able to follow the proceedings.

My perusal of the record indicate that the procedure in plea taking was adhered to and the learned trial magistrate cannot be faulted.

Section 102 (1) (a) and (h) of the Wildlife Conservation and Management Act states:

(1) Any person who—

(a) enters or resides in a national park or reserve otherwise than under licence, permit or in the course of his duty as authorized officer or a person lawfully employed in the park or reserve, as the case may be;

.....

.....

.....

(h) undertakes any related activity in wildlife protected areas contrary to the provisions of this Act: commits an offence and is liable on conviction to a fine of not less than two hundred thousand shillings or to imprisonment of not less than two years or to both such fine and imprisonment.

The provision provides a minimum sentence of not less than two years imprisonment or a fine of not less than two hundred thousand shillings.

The appellant was fined 200 000 shillings and in default to serve 2 years imprisonment. Section 28 of the Penal Code has a scale for imprisonment terms in default of fines imposed .This is what it states:

(2) In the absence of express provisions in any written law relating thereto, the term of imprisonment or detention under the Detention Camps Act (Cap. 91) ordered by a court in respect of the non-payment of any sum adjudged to be paid for costs under section 32 or

compensation under section 31 or in respect of the

non-payment of a fine or of any sum adjudged to be paid under the provisions of any written law shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any such case the maximum fixed by the following scale—

The Act under which the appellant was convicted does not provide for a default sentence where a fine has been imposed. The trial magistrate erred in assuming that a sentence of two years imprisonment was the default sentence to the fine of Kshs 200 000/=. The scale under the penal code ought to have guided him. The correct default sentence therefore ought to have been 12 months imprisonment in count one.

The penalty in count two is the same as in the first count for it is provided under the same paragraph. Similarly the correct default sentence therefore ought to have been 12 months imprisonment as in count one.

The appeal by the appellant succeed to the extent of the default sentence which ought to be 12 months on each count if the appellant does not pay the fine meted out.

DATED at Marsabit this 8th day of September 2016

KIARIE WAWERU KIARIE

JUDGE