**Lebiringin v Republic**

**Division:** High Court of Kenya at Nairobi

**Date of judgment:** 18 October 1973

**Case Number:** 179/1973 (40/74)

**Before:** Sir James Wicks CJ and Hancox J

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*[1] Criminal Practice and Procedure – Charge – Form of – Not necessary for charge to negative*

*exceptions to or qualifications of offence – Criminal Procedure Code, s.* 137 (*K.*)*.*

*[2] Criminal Practice and Procedure – Sentence – Loss of job can properly be taken into account.*

**Editor’s Summary**

The appellant was convicted on his own plea of illegal possession of a game trophy. During the course of taking the plea the appellant put forward an explanation which was inconsistent with guilt, but he then withdrew this. The appellant was sentenced to two years’ imprisonment and the trophy and the vehicle used were ordered to be confiscated. On appeal it was contended that the charge was bad as it did not negative by averment all the defences open to the appellant, that the appellant had not intended to plead guilty, that the sentence was excessive in comparison with another case, and that the magistrate had not taken into account the loss the appellant would suffer by dismissal from his employment.

**Held –**

(i) it is not necessary in the charge to negative exceptions to, or qualifications of, the offence;

( ii) the appellant intended to and did plead guilty;

(iii) the sentence was excessive, but a custodial sentence was appropriate;

(iv) the loss suffered by an accused in losing his employment is a factor which may be taken into

account in assessing sentence.

Sentence varied.

**Cases referred to Judgment:**

(1) *Lukas Bachegwa v. R*. (1956), 29 K.L.R. 189.

(2) *Koech v. Republic*, [1968] E.A. 109.

(3) *R. v. Turner* (1970), 54 Cr. App. R. 352.

(4) *R. v. Barnes* (1971), 55 Cr. App. R. 100.

(5) *Kibilo v. Republic*, [1971] E.A. 101.

(6) *Marete v. Republic,* Cr. App. 743 of 1972 (unreported).