



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KITUI**

**CRIMINAL REVISION CASE NO. 247 OF 2018**

**SIMON MBURU.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Arising from the Sentence in Kitui Chief Magistrate's Court*

*Criminal Case No. 496 of 2018 by M. Murage C M on 23/04/18)*

**R U L I N G**

1. **Simon Mburu**, the Applicant by a letter received by this Court on the **25<sup>th</sup> April, 2018**, seeks Revision on the sentence imposed for the offence of **Transporting Forest Produce Without Forest Movement Permit** contrary to **Section 52(1)(a)** as read with **Sub-Section (2)** of the **Forest Act, No. 7 of 2005**.

2. This is a matter where the Applicant (offender) pleaded guilty at the outset and he is not seeking review of the conviction but the sentence meted out.

3. **Section 52** of the **Forest Act, No. 7 of 2005** provides thus:

*“Any person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction to a fine of not less than fifty thousand shillings or to imprisonment for a term of not less than six months or to both such fine and imprisonment.”*

4. This is a matter where the State had no records of the Applicant. In sentencing the Court took judicial notice of what was in the public domain and stated thus:

*“The offence is considered and the mitigation address. It is in the public domain that charcoal burning has been banned. I find that to deter others the offence calls for custodial sentence. Each accused to serve 12 months imprisonment. Right of appeal in 14 days.”*

5. The principle of interfering with sentence by a trial Court was stated in the case of **Ogolla s/o Owour vs. Republic (1954) EA CA 270** where the Court pronounced itself thus:

*“The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors”. To this, we would add a third criterion namely, “that the sentence is manifestly excessive in view of the circumstances of the case (R -v- Shershowsky (1912) CCA 28TLR 263).”*

6. Looking at the law as aforesaid, the sentence meted out was legal. The learned trial Magistrate gave reasons that prompted her to impose the sentence. It has not been stated that in exercising the discretion she acted on wrong principles or that the sentence was excessive. What the Applicant states is that the Court should have considered imposing a fine.

7. In the premises I find the application being devoid of merit. Accordingly it is dismissed.

8. It is so ordered.

**Dated, Signed and Delivered at Kitui this 27<sup>th</sup> day of August, 2018.**

**L. N. MUTENDE**

**JUDGE**