REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CRIMINAL APPEAL NO. 21 OF 2015

(Formerly Nakuru HC.CR.A. No. 140 of 2014)

(Being an Appeal from Original Conviction and Sentence in Criminal Case No. 1919 of 2013 of the Chief Magistrate's Court at Naivasha before S. Muchungi - RM)

SIMON MBATHI MWANGI..……APPELLANT

-VERSUS-

REPUBLIC……...RESPONDENT

J U D G M E N T

1. The background to this appeal is not disputed. The appeal relates to the order made on 23/6/2014 by **Muchungi RM**. The said order was made at the conclusion of the trial in Criminal Case No. 1919 of 2013 where three persons, namely **David Gitau Wangari**, **Samuel Ndungu Wairimu** and **Samson Maina Mwaura** faced three counts under the Wildlife (Conservation and Management) Act and one count under the Food Drugs and Chemical Substances Act.

2. The Accused were jointly charged, in the first count, with Dealing in a Government Trophy contrary to Section 39 (3) (b) of the Wildlife (Conservation and Management) Act Chapter 376 Laws of Kenya.

Particulars:

> **"1. David Gitau Wangari**
>
> **2. Samuel Ndung'u Wairimu**
>
> **3. Samsom Maina Mwaura**
>
> **On the 26th day of August 2013 at around 6.00am, at Ndabibi in Naivasha District of Nakuru County, jointly with others not before court, they were found dealing in bush meat, namely zebra meat weight 150Kg with a street value of Kshs 60,000/=, in a motor vehicle Registration number KBD 553J, without a dealer's licence thereof." (sic)**

3. In the second count they were charged with Being in possession of a Government trophy contrary to Section 42 (1) (b) as read with Section 52 (1) of the Wildlife (Conservation and Management) Act Cap 376 Law of Kenya.

Particulars:

"1. David Gitau Wangari

2. Samuel Ndung'u Wairimu

3. Samsom Maina Mwaura

On the 26th day of August 2013, at Ndabibi in Naivasha District of Nakuru County, jointly with others not before court, they were found in possession of 150Kg of zebra meat packed in a motor vehicle registration number KBD 553J Toyota Caldina and weight machine globe universal, without a certificate of ownership thereof."

4. The third count was Failing to make a report of obtaining possession of a Government Trophy contrary to Section 39(3) (a) of Wildlife (Conservation and Management) Act Cap 376 Laws of Kenya.

Particulars:

"1. David Gitau Wangari

2. Samuel Ndung'u Wairimu

3. Samsom Maina Mwaura

On the 26th day of August 2013, at Ndabibi in Naivasha District of Nakuru County, jointly with others not before court they failed to a report to an authorized officer for being in possession of 150 Kg meat, being the property of Government."

5. The fourth count was Being in possession of uninspected meat contrary to Section 7 of Food, Drugs and Chemical Substance Act, Cap 254 Laws of Kenya.

Particulars:

"1. David Gitau Wangari

2. Samuel Ndung'u Wairimu

3. Samsom Maina Mwaura

On the 26th day of August 2013, at Ndabibi in Naivasha District of Nakuru County, jointly with others not before court they were found in possession of 150Kg uninspected meat, without a permit from a public health officer thereof."

6. In her judgment following a full trial, the trial magistrate found the Accused persons guilty and convicted them in respect of counts 2, 3 and 4. The order appealed from was to the effect that the motor vehicle stated in the charge particulars that is, **KBD 553J** be forfeited to the State.

7. The above order was made after the Appellant herein, **Simon Mbathi Mwangi** had appeared in court on 23/6/2014, seemingly in response to a Notice to Show Cause issued by the court on 19/6/2014. In showing cause, he had stated to the court as follows:

"The first time the motor vehicle was involved in the offence; I had given to David Gitau Wangare for hire. I was not aware that he would use it in illegal deals. The 2nd time, we were in the process of transacting with David Gitau, I was to sell it to David Gitau but before the transaction could be finalized Samuel Wairimu came and borrowed it alleging that he wanted to use it on a journey to a funeral service. I got surprised when I was told it had been detained and David Gitau was in it. I have the sale agreement between myself and David

Gitau. I was to be paid by way of installments. I have not been paid al the amount."

8. His words regarding "the first time the motor vehicle was involved in an offence" was apparently in reference to a previous similar conviction, proven at the close of the trial, against the 1st Accused, **David Gitau Wangari** in **Criminal Case 1271 of 2012**. The relevant proceedings therein were tendered by the prosecutor in court. In the said case, **David Gitau Wangari** was charged before the Chief Magistrate's Court Naivasha on 30/4/2012 with several offences as follows:-

> **Count I:** Being in possession of a Government Trophy contrary to Section 42 (1) (b) as read with Section 52 (1) of Wildlife Conservation and Management Act Cap 376 Laws of Kenya.
>
> Particulars:
>
> **"On the 29th day of April 2012, along Suswa-Maai-Mahiu Highway in Naivasha Municipality within Nakuru County, he was found in possession of 100Kg of Zebra meat in a Motor Vehicle Registration number KBD 55J Toyota Caldina without authority from Kenya Wildlife Service."**
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> **Count II:** Being in possession of un-inspected meat contrary to Section 7 of Food Drug and Chemical Substances Act Cap 254 Laws of Kenya.
>
> Particulars:
>
> **"On the 29th day of April 2012, along Suswa-Maai-Mahiu Highway in Naivasha Municipality within Nakuru County, he was found in possession of 100Kg un-inspected meat without a permit from Public Health Officer."**

9. David Gitau Wangari had pleaded guilty to the charges and was sentenced to two years imprisonment, and 6 months imprisonment respectively. Though the plea court had then issued a Notice to show cause to the owner of the offence vehicle **KBD 553J** to appear in court to show cause why a forfeiture order could not be made, it seems that no further proceedings were subsequently held.

10. Regarding the instant appeal, seven grounds of appeal are raised in the memorandum of appeal filed on 4/7/2014, in challenging the forfeiture order. Briefly the substance thereof is as follows:

> 1. The motor vehicle (Appellant herein) owner was not served with the notice to show cause and given sufficient time as required under Section 389A of the Criminal Procedure Code.
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> 2. The Appellant was prejudiced as he was not allowed to give sworn evidence when he appeared in court.
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> 3. The Appellant's explanation was not challenged by the prosecution.
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> 4. The court erred by making an unsupported conclusion that the Appellant conspired with the convicted accused person.
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> 5. That the trial magistrate erroneously took into account an explanation given in proceedings on 18/9/2013 as vehicle always belonged to the Appellant.
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> 6. That the Appellant not having been an accused in the trial, the prosecution failed to bring evidence of the use of the vehicle a second time for the commission of offences.
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> 7. The court erred by not requiring the 2nd Appellant (?) to testify in the forfeiture proceedings.

11. The Appellant therefore prays that the forfeiture order in respect of the motor vehicle **KBD 553J** be

quashed and the subject motor vehicle be released to the Appellant.

12. The Appellant's grounds of appeal were merged into three grounds in written submissions by Mr. Gichuki for the Appellant. Regarding grounds 1, 2 and 3 it was submitted that the procedure to be used in respect of forfeiture under Section 52 (1) of the Wildlife (Conservation and Management) Act is that provided under Section 389 (A) of the Criminal Procedure Code. This means that a notice to show cause ought to have been issued and served upon the Appellant, giving him adequate opportunity to prepare. It was submitted that this procedure was not adhered to in this case. Further, that upon appearing in court the Appellant was not required to be sworn in giving his explanation, which nevertheless the prosecution did not challenge.

13. Regarding grounds 4 and 5, the Appellant contends that the trial court, in reaching its decision placed reliance on extraneous matters, in particular, the submission made in respect of the subject vehicle by the Appellant's counsel, on 18/9/2013 in the course of the trial. That the proceedings of the said date having been incomplete, the court should not have based its decision thereon, and besides that no evidence emerged at the trial to connect the Appellant with the 1st Accused therein in relation to the offence facing the latter.

14. Mr. Gichuki further argued that the fact that the Appellant was not an Accused in the two trials in respect of offences involving the use of his vehicle, namely, the subject case **Criminal Case 1919 of 2013** or the previous **Criminal Case 1271 of 2012** was in his view a matter relevant to the decision regarding forfeiture

15. Submissions in support of ground 6 and 7 repeat the submissions made in connection with grounds 4 and 5 and it is superfluous to restate them here.

16. The appeal was opposed by the Director of Public Prosecutions. In his submissions Mr. Koima for the DPP argued that pursuant to the court notice to show cause to the owner of the motor vehicle **KBD 553J**, the Appellant presented himself in court, and gave reasons why the motor vehicle should not be forfeited. Asserting that the matter of forfeiture and relevant procedure are provided for under Section 52 (1) of the Wildlife (Conservation and Management Act) and Section 389 (A) of the Criminal Procedure Code, the Director of Public Prosecutions submitted that the Accused persons in the Criminal Case were convicted on a forfeiture offence, as defined in Section 42 (1) of the former Act.

17. As far as the Director of Public Prosecutions is concerned, the lower court record showed that the requisite notice was issued and that in answer thereto, the Appellant attended the court. Thus, the court complied fully with the law, by according the Appellant an opportunity to be heard. Further, the DPP submitted that the Appellant admitted the involvement of his motor vehicle in two forfeiture offences. The Director of Public Prosecutions asserts that the lower court having made its findings forfeited the motor vehicle. That the forfeiture was proper and legal and the appeal has no merit.

18. I have considered all the matters canvassed on this appeal. The background thereto as earlier outlined is not disputed. The forfeiture order emanated from a criminal trial and conviction of three accused persons on several offences, one of which was a forfeiture offence. Against one of them **David Gitau Wangari**, a similar previous conviction was brought to the court's attention before sentence. In both instances, the same vehicle **KBD 553J** claimed as the Appellant's property was used to ferry the contraband game meat.

19. The two criminal cases had been brought under the repealed Wildlife (Conservation and Management Act) Cap 376. The latter Act was repealed in 2013 by the Wildlife (Conservation and Management) Act which commenced in 2014. Section 2 of the repealed Act defined a forfeiture offence to mean

"an offence which is so designated by any of the provisions of this Act creating offences."

20. There is no doubt that the offence in count 2 in the **Criminal Case 1919 of 2013** and count 1 in **Criminal Case No. 1271 of 2012** were forfeiture offences. Section 52 (1) of the repealed Act provided

for forfeiture in respect of a forfeiture offence as follows:-

> **"Where a person is convicted of a forfeiture offence the Court shall, unless it considers, for reasons to be recorded by the Court, that in all the circumstances of the case it would be unjust so to do, order that any animal, trophy, weapon, net, vehicle, instrument, material or thing whatsoever, whether similar to those enumerated or not, in relation to, in connexion with, or by means of which the offence has been committed shall be forfeited to the Government."** (emphasis added)

21. It is true as the Director of Public Prosecutions and the Appellant's counsel have submitted, that Section 52 (1) above did not provide for the procedure of forfeiture proceedings. However, I do not accept the Appellant's submission that the court had a wide discretion on the question whether or not to order forfeiture. My reading of Section 52 (1) of the repealed act suggests otherwise: that it was mandatory to order forfeiture unless, for reasons recorded **"in all circumstances of the case it would be unjust so to do."** In other words non-forfeiture where a conviction is recorded on a forfeiture offence is the exception.

22. Secondly, the Section does not intimate that the person convicted must be the owner of, or person interested in the forfeited item or goods. Or that a forfeiture order would only be made where the owner or party interested in the forfeited goods was an Accused in the trial. For the purpose of this case, the offence was possession of game meat conveyed by means of the forfeited vehicle. The rationale behind Section 52 of the repealed Act is not hard to see. It was intended to be a comprehensive deterrent against wildlife offences, not only by forfeiting the trophies which are the ultimate motivation, but also the means used in the commission of wildlife offence.

23. In her wisdom, and no doubt bearing in mind the maxim that no man ought to be condemned unheard, the trial magistrate, apparently applying Section 389 of the Criminal Procedure Code, issued a notice to show cause to the owner of the motor vehicle. I do agree with both counsel that, in the absence of a procedure being prescribed in the repealed Act, resort must be had to Section 389A of the Criminal Procedure Code.

24. The provision is to the following effect:-

> **"(1) Where, by or under any written law (other than section 29 of the Penal Code), any goods or things may be (but are not obliged to be) forfeited by a court, and that law does not provide the procedure by which forfeiture is to be effected, then, if it appears to the court that the goods or things should be forfeited, it shall cause to be served on the person believed to be their owner notice that it will, at a specified time and place, order the goods or things to be forfeited unless good cause to the contrary is shown; and, at that time and place or on any adjournment, the court may order the goods or things to be forfeited unless cause is shown by the owner or some person interested in the goods or things:**
>
> **Provided that, where the owner of the goods or things is not known or cannot be found, the notice shall be advertised in a suitable newspaper and in such other manner (if any) as the court thinks fit.**
>
> **(2) If the court finds that the goods or things belong to some person who was innocent of the offence in connexion with which they may or are to be forfeited and who neither knew nor had reason to believe that the goods or things were being or were to be used in connexion with that offence and exercised all reasonable diligence to prevent their being so used, it shall not order their forfeiture; and where it finds that such a person was partly interested in the goods and things it may order that they be forfeited and sold and that such person shall be paid a fair proportion of the proceeds of sale."**

25. In this case, the Appellant has attempted to fault the trial court for failing to comply with the above procedure. Firstly, on the basis that no notice was issued and served on the Appellant. Nothing could be

further from the truth. An order of the court to that effect was made on 19/6/2014 and on 23/6/2014 (the appointed day), the Appellant appeared in court in apparent response to the order. There is no prescribed format provided as to the form the notice under Section 389A of the Criminal Procedure Code must take. The fact that there is no physical copy of the notice on the record is inconsequential: the extracted notice would only be a physical manifestation of the relevant Court's order and would derive its existence from the order of the court, not vice versa.

26. Secondly, the Appellant appeared in court in obedience to the notice-to-show-cause order. The purpose of the notice envisaged in Section 389A of the Criminal Procedure Code is to give the owner or person interested in the goods or things to be forfeited, notice that the court will **"at a specified time and place order the goods or things to be forfeited unless good cause to the contrary is shown"**.

27. There is no more purpose to the notice than this. So that when the Appellant appeared, it is because he had notice of the time, place and subject of the proposed forfeiture under consideration. His statement to the court, upon appearing, leaves no doubt that the Appellant was fully aware of the purpose of the proceedings, as he immediately launched into the explanation I have cited at the beginning of this judgment.

28. He started by giving an explanation concerning the two cases in which his vehicle had been involved in trafficking game meat. He did not ask the court for time to prepare to show cause. The record of the proceedings shows he was well prepared, and armed with documentary evidence to support his oral statements. And it matters not, that he was not placed under oath. As desirable as that would seem, I do not think it is a requirement that statements by owners of goods or parties having interest therein give sworn evidence. Because, the proceedings emanate from a criminal trial and may involve some element of finding of guilty knowledge or some culpability on the part of the owner or person interested in the goods, it would be undesirable for the court to demand a sworn statement of such a person when he does appear.

29. However, it would in my view, be advisable for the court, upon such person appearing, to explain to him the option to give a sworn or unsworn statement and to call witnesses in support of his explanation. The fact that this did not happen in this case does not vitiate the proceedings of 23/6/2014. It would have been different in my view had the court forced the Appellant to give a sworn statement against his will. Not only did the Appellant make an unsworn statement and therefore escape cross-examination by the prosecution, but also he did not intimate to the court that he had any witness to call. The only other persons he mentioned are the accused in the trial. He did not ask that they testify on his behalf. However, as the proceedings of 18/9/2013 in the lower court show, the Appellant was well appraised of the case.

30. Besides, both accused in this case had in their defences totally distanced themselves from the cargo in the offensive vehicle, denying the cargo was in the said vehicle. That defence was dismissed. It was not the court's duty to direct the Appellant on what witnesses to call in order to show cause, especially since the Appellant himself appears to have been well prepared for the session, aware that his vehicle had been involved in two offences concerning game meat.

31. Similarly, on the substance of the court's impugned ruling, the Appellant's statement to the court on 23/6/2014 showed that he knew that his vehicle had been used to commit an offence in **Criminal Case No. 1271 of 2012** wherein the Accused **David Gitau Wangari** had been convicted on a forfeiture offence under the Wildlife (Conservation and Management) Act 30/4/2012. The 2nd case Criminal Case 1919 of 2013 in which the Appellant appeared was brought against **David Gitau Wangari** and 2 others came about one year 4 months later.

32. In the instant case, the Appellant told the court that on the first occasion, he had leased the vehicle to **David Gitau Wangari.** Concerning the second case, he also placed before the court an agreement to support the further claim that he subsequently entered into a sale agreement with the said person in respect of the vehicle. If believed, that would mean that despite the vehicle having been used for an unlawful purpose on the first occasion, the Appellant continued to deal with **David Gitau Wangari** in

respect of the same vehicle. That is difficult to understand if the Appellant was innocent of the Accused's activities.

33. I have perused the agreement tendered. The agreement dated 22/5/2013, suggests that the purchaser (**David Gitau Wangari**) took possession of the vehicle after paying Shs 150,000/= as deposit of the total purchase price sum of Shs 400,000/=. The agreement states in part:-

> **"CAR SALE AGREEMENT ON 22/5/2013**
>
> **I David Gitau Wangari have agreed to honour the agreement of paying the remaining balance of Shs 250,00/= (Two Hundred and Fifty Thousand) at agreed time of 3 months failure to which Simon Mbathi <u>can repossess his car unconditionally</u> i.e. no refund of any amount of money paid Kshs 150,000/=. Once David Gitau Wangari have paid all the money as per agreement, I Simon Mbathi Mwangi will surrender the valid documents i.e. log book, transfer for, pin number and a copy of identity card for easy transaction." (sic)**

34. One month after David and his co-accused were charged in the second case, a new endorsement was recorded on the said alleged sale agreement. The endorsement dated 12th September 2013 documents in part that the Appellant had released the log book of the motor vehicle to **Samuel Ndungu Wairimu** (the 2nd Accused in the instant case) for purposes of having the motor vehicle released by police, because he was upon arrest, in 'custody' of the vehicle and in the company of **David Gitau Wangari,** the 1st Accused who had yet to pay the full sum of the purchase price.

35. The second reason for the alleged release of the motor vehicle logbook to the said **Samuel Ndungu Wairimu** was that **David Gitau Wangari** was in custody as at 12/9/2013. However before the court, the application for the release of the vehicle was made on 18/9/2013 by counsel for the Accused, Mr. Ngige. Counsel sought the release of the vehicle to the Appellant. Thus the second reason was not valid. Besides, when Mr. Ngige addressed the court, he did not mention any sale agreement between the Appellant and the 1st Accused even though he clearly had the full instructions of the accused persons including **David Gitau Wangare** and **Samuel Ndungu Wairimu,** and evidently the Appellant who was also present.

36. Contrary to the contents of the exhibited sale agreement, the counsel stated in court on 18/8/2013 that:

> **"I have an application. I seek for release of motor vehicle registration number KBD 553J, the owner was not involved in the offence. The <u>Accused were using it without authority</u>. The motor vehicle was not owned by the Accused. The owner is Simon Mbathi Mwangi. I have the original log book 52120849. <u>He had hired it out as a taxi and was not aware of the Criminal acts that accuseds had been charged under. He is seeking that motor vehicle be released to him as it is his sole source of livelihood</u>. He has suffered because of its retention and is willing to abide by court conditions until conclusion of the matter. Mr. Mbathi is in court. He is seeking that motor vehicle be released to him." (sic)**

37. If indeed the sale agreement (dated 22/5/2013) existed on that date, the Appellant's counsel had no reason to state in court that the vehicle had been leased out as a taxi to the Accused, or that the Accused persons used it without his authority. And, he already was on the date in question no doubt aware of the previous case involving **David Gitau Wangari** and the use of the vehicle in carrying out a similar offence. Of that occasion he subsequently told the court that he had leased the vehicle out to **David Gitau Wangari**.

38. The trial court was in the circumstances perfectly entitled to look at the statements made on 18/9/2013 on behalf of the Appellant, *interalia* and compare them with the explanation later made to the court during the forfeiture proceedings. It is telling that when the prosecution opposed the statements made on 18/9/2013 and urged that a formal application be made, Mr. Ngige persisted by saying:

"I appreciate prosecution for guidance but owner of motor vehicle is present in court."

Despite directions being given by the Appellant to file a formal application, he did not.

39. A statement made on behalf of an Accused person in his presence, by an advocate instructed by him and not disputed by him, must be deemed to represent the client's instructions. It does not matter that the trial court did not at that point make any findings. By 18/9/2013, the Appellant if we believe his subsequent statement at the forfeiture proceedings, had already entered into a sale agreement with and released the motor vehicle to **David Gitau Wangari.** Why then did he claim on 18/9/2013 to have leased the vehicle as a taxi to the Accused persons? Or state that the Accused used the vehicle without his authority?

40. In my view the statements in respect of the motor vehicle made on 18/9/2013 and in court on 23/6/2014 cannot both be true. It was convenient at that time of the trial, for the Appellant on 18/9/2013 to claim he owned the vehicle and had only hired it out to the Accused. However, once the 'hirers' were convicted, he was at pains to create some reasonable distance between himself and the possession and ownership of the vehicle in the periods material to the offence, and to make it seem that the beneficial owner of the vehicle and the one in actual possession at the time of the offence was **David Gitau Wangari,** based on a sale agreement. Thus he could claim "residual ownership" because as he claims the full purchase price had "not been paid". Whatever the case, it is either that the Appellant had at the material time leased motor vehicle to the Accused persons as he stated on 18/9/2013 or he had sold it to one of them, as he asserted on 23/6/2014.

41. Even if the trial court only considered material placed before it at the forfeiture proceedings and ignored statements made on 18/9/2013, the former material does not stand up to scrutiny. Notably, the Appellant on that latter occasion, claimed to have given the motor vehicle to **Samuel Ndungu Wairimu** to use for a funeral, contradicting his own sale agreement to the effect that the purchaser had taken possession thereof. Ultimately, by some seeming happenstance, the Appellant seemed to suggest, **David Gitau Wangari** the alleged purchaser also happened to be in that vehicle at the time of the arrest and recovery of the game meat. The vehicle for which he had paid in part was being allegedly driven by **Samuel Ndungu Wairimu**. By further coincidence, the vehicle was ferrying zebra meat as in the first case facing **David Gitau Wangari**. These coincidences are too many for belief.

42. In the circumstances, the court was entitled to dismiss the Appellant's explanations and to conclude that the Appellant had allowed the motor vehicle to be used on two separate occasions for illegal activities. It is too late for the Appellant to challenge the proof offered in respect of the 1st Accused person's past conviction. Not only did the said Accused **(David Gitau Wangari)** admit the said past conviction, but also, I cannot think of better proof of a previous conviction than the production of court proceedings in the previous case, as tendered in this case. Section 142 of the Criminal Procedure Code provides for several modes of proving past convictions as follows:

> **"(1) In any trial or other proceeding under this Code, a previous conviction may be proved, in addition to any other mode provided by any law for the time being in force-**
>
> > **a. by an extract certified, under the hand of the officer having the custodyof the records of the court in which the conviction was had, to be a copy of the sentence or order; or**
> >
> > **b. by a certificate signed by the officer in charge of the prison in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered, together with, in either case, evidence as to the identity of the accused person with the person so convicted.**
>
> **(2) A certificate in the form prescribed by the Minister given under the hand of an officer appointed by the Minister in that behalf, who has compared the finger prints of an accused person with the finger prints of a person previously convicted, shall be *prima facie* evidence of all facts therein set out if it is produced by the person who took the finger prints of the**

accused.

(3) A previous conviction in a place outside Kenya may be proved by the production of a certificate purporting to be given under the hand of a police officer in the country where the conviction was had, containing a copy of the sentence or

order, and the finger prints, or photographs of the finger prints, of the person so convicted, together with evidence that the finger prints of the person so convicted are those of the accused person.

(4) A certificate under this section shall be *prima facie* evidence of all facts stated therein without proof that the officer purporting to sign it did in fact sign it and was empowered so to do. (emphasis added)

43. Having reviewed all the matters raised on this appeal, I am satisfied that the trial court substantially followed the procedure in Section 389 (A) of the Criminal Procedure Code and that consequent findings made are well founded. The wording of Section 52 (1) of the Wildlife (Conservation and Management Act) in my view calls for a more stringent approach than Section 398 (A) of the Criminal Procedure Code so far as forfeiture is concerned. The Appellant did not place before the court material and circumstances to bring his case within the exception to the clearly mandatory requirements to forfeit, under Section 52 (1) of the Wildlife (Conservation and Management) Act. The Section provides that the court **'shall'** order forfeiture unless there are recorded reasons that **"it would be unjust so to do."**

44. In my own opinion, the forfeiture order was deserved and no injustice was occasioned upon the Appellant, who on all accounts must be fully complicit with the offences in question, for personal benefit. Therefore, this appeal has no merit. It seems to me that the Appellant is merely clutching at straws, whereas from the circumstances herein, he was well aware of the criminal activities for which his vehicle was used. Not once, but twice in a short period of time. The Appeal is dismissed.

Delivered and signed at Naivasha, this **24th** day of **May, 2017.**

In the presence of:-

Mr. Mutinda for the DPP

Mr. Gichuki for the Appellant

Appellant – present

C/C – Quinter

C. MEOLI

JUDGE