



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NANYUKI**  
**CRIMINAL REVISION NO. 120 OF 2017**

**PATRICK GITARI MWIANDU.....APPELLANT**

*Versus*

**REPUBLIC.....RESPONDENT**

*(Being a Revision from the order of 4<sup>th</sup> April and 12<sup>th</sup> May, 2017 of*

*Hon. W J Gichimu Principal Magistrate in Nanyuki Chief Magistrate's Court Criminal Case No. 320 of 2016*

**RULING ON REVISION**

1. This court is requested to revise the trial Court's order made for the forfeiture of the cash bail in respect to Elijah Kamau Maina, which cash bail was made by Patrick Gitari Mwiandu.

**BACK GROUND**

2. In Nanyuki Chief Magistrate's Court **Criminal Case No. 320 of 2016** there all 11 accused persons. They are facing the **charge of being in possession of endangered tree species Contrary to Section 92 of the Wildlife Conservation and Management Act No. 47 of 2013.**

3. As stated before there at 11 accused persons in that case. The second accused Elijah Kamau Maina was granted a Ksh. 100,000 cash bail by the trial court. Cash bail was posted by Patrick Gitari Mwiandu. When the 2<sup>nd</sup> accused failed to attend court the trial court on 4<sup>th</sup> April, 2017 made the following order:

***Court: Warrant of arrest to issue against accused 2. Cash bail forfeited.***

4. The 2<sup>nd</sup> accused was later apprehended and again the trial court made the following order on 12<sup>th</sup> May, 2017.

***Court: The cash bail deposited by accused 2 is forfeited as per the court order issued on 4/4/2017.***

5. It is those two orders that Mwiandu wishes they be revised by this court in the exercise of the power donated under **Section 362 of the Criminal Procedure Code Cap 75.**

**ANALYSIS AND DETERMINATION**

6. The trial court's record indicates that the procedure of forfeiture under **Section 131 of Cap 75** was not

followed. The trial court failed to ensure that Mwiandu was accorded the right to be heard. Mwiandu should have been served with a notice to show cause. It is only after the trial court had considered that cause shown by Mwiandu that the trial court could have ordered for forfeiture. This is what was stated in the case **ISAAC KIPLANGAT MUTAI – V- REPUBLIC [2013] eKLR**. Viz:

***“On the second issue, the order of forfeiture of the cash bail, it is the requirement of Section 131 of the Criminal Procedure Code that the court will first make an inquiry of the accused or his surety to show cause why his recognizance should not be forfeited. The order forfeiting his cash bail cannot therefore be made simultaneously with the order cancelling bail/bond.***

***The accused as well as the surety is required to be granted opportunity, to a hearing, to show cause why his bail/bond should not be forfeited to the state. Failure to do so in a grave breach of the rules of natural justice.”***

7. In view of the above discussion orders of 4th April, and 12<sup>th</sup> May, 2017 are hereby vacated. **An order is hereby made for the refund to PATRICK GITARI MWIANDU of the cash bail of Ksh. 100,000. It is so ordered.**

**Dated at Nanyuki this 3<sup>rd</sup> August 2017**

**MARY KASANGO**

**JUDGE**