



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KABARNET

HCCR REVISION NO. 7 OF 2017

ELIJAH KIRAGU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[An appeal from the original conviction and sentence by the

Hon. J. NTHUKU SRM, in Eldama Ravine Criminal Case

No. 855 OF 2017 between Elijah Kiragu Vs Republic]

RULING

1. This revision case has been reported to the high court by the trial magistrate pursuant to section 362 and 363(3) of the Criminal Procedure Code upon discovery of the error of law in the sentence imposed on the accused in Criminal Case No. 855 of 2017 Eldama Ravine Law Courts.

2. The accused who faced a charge of removing and trespassing forest produce without a permit contrary to section 64(1) (a) as read with section 64(2) of the Forest Conservation and management Act No. 34 of 2016, was convicted on his own plea of guilty and sentenced to a fine of Ksh. 200,000/- in default to serve imprisonment for a period of 12 months.

3. Section 64 of the forest and management Act No. 34 of 2016 on prohibition activities in forests on the following terms in material parts.

“64 Prohibition activities in forest

(i) Except under a licence or permit or a management agreed issued or entered into under this act, no person shall, in a public or provisional forestation.

(a) Fell, cut, take, burn, injure or remove any forest produce;

(ii) Any person who contravenes the provision of sub-section (1) of this section commits an offence and is liable on conviction to a time not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.”

4. Firstly, the sentence imposed by the trial court is unlawful because the time exceeds Ksh. 100,000/-, and the court must correct the error and substitute the lawful amount of fine not exceeding Ksh. 100,000/- the value of the 35 cider posts which the accused admitted to have been transporting are valued at Ksh. 7000/-. I consider that having regard to this value of forest produce a sentence of the maximum fine of Ksh 100,000/- would be excessive. See *Ambani v. R* [1990] KLR 161 per Bosire J on the Principle that a sentence should reflect the value of the thing stolen.

5. In addition, the record does not show whether the accused was a first offender, and the court could visit to this benefit issue that he was and treat his as small, as an integrity factor on this sentence.

AS held in *Josephine Arissol V. R* [1957] E.A 447, “it is unusual to impose this maximum sentence on a first offender, and it would be wrong to default from that rule because, on the evidence [the offender] might have been convicted of a grave offence”

See also Mavuta v. R [1973] EA 59.

6. In order to eradicate any perceived benefit for anticipated proceeds for sale of the forest produce, I would put the court of time in case at Ksh. 70,000/- being ten (10) times the stolen value of the forest produce in the charge sheet.

7. Secondly, although in default sentence of imprisonment for 12 months would appear justified under section 28 (2) of the penal code for all fines exceeding Ksh. 50,000/-. It would be unreasonable in my view to impose an imprisonment of six months prescribed under section 64 (2) of the Forest Conservation No. 43 of 2016. Although the period of six months is not the default law provided for the sentence of a fine under section 54 (2) of the Act, it is the equivalent imprisonment term given against the fine of not exceeding Ksh. 100,000/- to wither or to both of which an offender may be sentenced.

8. Provata. I consider that a default sentence of imprisonment for 4 months should accurately be given against a fine of 70,000

9. Which about 2/3 the maximum fine of Ksh. 100,000/-.

Order

10. Accordingly, for the reasons set out above in exercise of the powers of the High Court and under 364(1) (h) of the Criminal Procedure Code, I alter the sentence imposed by the trial court to one of a fine of Ksh. 70,000/- in default imprisonment for (4) months.

11. As the offender has already paid the sum of Ksh. 200,000/- imposed by the trial court, there shall be an order for the refund of the excess amount of money of Ksh. 130,000/- to the offender.

12. The court commands the proactivity of both the trial court and the head of Court Station at Eldama Ravine Law Courts for referral of this matter for revision upon discovery of the error of the trial court.

DATED AND DELIVERED ON 14TH DAY OF DECEMBER, 2017.

EDWARD M. MURIITHI

JUDGE

Appearances: -

Appellant in person

Ms. Macharia, Ass. Director of Public Prosecutions.