



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**REVISION NO. 4 OF 2016**

**(Being a Revision from the conviction and sentence of the Kitale Senior Resident Magistrate V.O. Adet delivered on 1st March 2016 in Criminal Case No. 1010 of 2016).**

**KENNEY YEGO }**

**BEN MBOGA }.....APPLICANTS**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING ON REVISION**

1. The applicants, **KENNEY YEGO** and **BEN MBOGA** have applied for an order of revision pursuant to the provisions of section 362 and 364 of the Criminal Procedure Code.
2. The applicants were charged with the offence of Removing Forest produce without a permit contrary to Section 52(1) (a) as read with section 52(2) of the Forest Amendment Act, No. 7 of 2005

The particulars of the offence are that on the 29th day of February 2016 along **Kapsait/Kapcherop road** in **Elgeyo Marakwet County**, jointly were found removing 600 pieces of rosewood timbers and 40 pieces of cedar timbers all valued at Kshs 200,000/- in a Motor Vehicle Registration Number **KCF 408T Mitsubishi Lorry** without a permit from Director of Forest Service Elgeyo Marakwet County.

3. The applicants pleaded guilty and were fined Kshs 50,000/- each in default three (3) months imprisonment. The trial court also made orders for the forfeiture of the timber.
4. The applicants were aggrieved by the forfeiture order. The grounds for the application for revision are that the forfeiture orders were made in chambers in the absence of the accused when the court had already pronounced judgment and was *Functus officio*. It is further stated that Sections 52(i) and 55(2) of the Forest Amendment Act No. 7 of 2005 provides for the penalty of the offence as a fine or imprisonment and not forfeiture.
5. I have perused the record of the Lower court for the purpose of satisfying myself as to the legality, correctness or propriety of the same. I have not found any irregularities in the proceedings. The Lower Court's Coram for the date of plea on 1/3/2016 reflects the presence of the accused. The court record has no reflection of any chamber proceedings.
6. Section 55(1) (c) of the aforesaid Forest Act provides for the forfeiture of the forest produce. The forfeiture orders imposed by the trial court are therefore within the law.
7. It is observed that the default sentence is irregular. Section 28 (2) of the Penal Code provides for a default sentence of six months for the non payment of a fine of Kshs 50,000/- . I however note that the fine has already been paid.

8. The application has no merit and is dismissed.

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**B. THURANIRA JADEN**

**JUDGE**

Dated and delivered this 23<sup>rd</sup> day of march 2016.

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**B. THURANIRA JADEN**

**JUDGE**