



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**

**Criminal Revision No. 51 Of 2016**

**ROBERT WACHIRA.....APPLICANT**

**Versus**

**REPUBLIC.....RESPONDENT**

**29/9/2016**

**Before W. A. Okwany J**

**In chambers**

**RULING**

**[1] I have perused the application dated 28/9/2016 seeking revision under **Section 262 of the Criminal Procedure Code.****

**[2] I have examined the record of Kilgoris PMCR. Case No. 1244 of 2016 for purposes of satisfying myself as to the correctness, legality and propriety of the order and sentence passed on 16/9/2016.**

**[3] I note that the accused was charged with the offence of transporting forest produce without movement permit contrary to **Section 14 (1) (a) of the Forest (Charcoal) Rules, 2009.****

**[4] The accused pleaded guilty and was convicted and sentenced to pay a fine of Kshs. 20,000/- in default to serve two (2) months imprisonment.**

**[5] In addition to the above sentence, the trial court also made an order that Motor Vehicle Reg. No. KCE 314 Q and the 12 bags of charcoal be forfeited to the state through Kenya Forest Services.**

**[6] I have perused **Regulation 14 (1) (a) of the Forest (charcoal) Rules, 2009** under which the accused was charged and noted that the said Section stipulates as follows:**

**“14 (1) No person shall, move charcoal products from one place to another unless that person-**

**(a) Is in possession of a valid charcoal movement permit issued under these Regulations and is operating in conformity with the terms and conditions of such permit.”**

**[7] Rule 14 (6) of the said Regulations, on the other hand, states as follows:**

**“Any person who contravenes the provisions of these regulations commits an offence.”**

[8] I note that the said Regulation 14 does not provide for a specific penalty for the offence created under the said rule, however, **Regulation/Rule 20** provides for a general penalty in the following terms:

**“Any person who contravenes the provisions of these regulations for which no specific penalty is provided commits an offence and is liable to a fine of not less than ten thousand shillings or an imprisonment for a term not exceeding three months.”**

[9] In view of the provisions of the above Regulations, I find that there was no legal basis allowing the trial magistrate to order for the forfeiture of the 12 bags of charcoal or the motor vehicle in question.

[10] Consequently therefore and by virtue of the powers conferred upon this court under **Section 264 of the Criminal Procedure Code**, I hereby revise the orders of the trial court and quash/set aside the order for the forfeiture of the 12 bags of charcoal and Motor Vehicle Reg. No. KCE 314Q to the state.

[11] I however uphold the sentence of Kshs. 20,000/= fine in default two (2) months imprisonment.

**W.A. OKWANY**

**JUDGE**

**29/9/2016**