

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CRIMINAL REVISION NO. 1 OF 2015

JOSEPH WAWERU.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

ORDER ON REVISION REQUEST

1. I have called for and perused the proceedings of the lower court in Criminal Case No. 1168 of 2014 and Miscellaneous Application Number 49 of 2015 filed in the Chief Magistrate's Court Narok.
2. The subject matter of the revision request are cedar posts which were detained by the Forestry Officer Narok and intended to be tendered as exhibits in the above criminal case. The same were never produced before the court and accused persons were subsequently acquitted of the charge of Being in Possession of Forest Produce Contrary to Section 54 (1) and (2) of the Forest Act.
3. The trial court subsequently declined on two occasions to order for the release of consignment of cedar posts to the accused persons. The chief reason was that the said consignment was not tendered before the court as an exhibit.
4. I do agree with the trial court's reasoning. The consignment having never been placed into the custody of the court, the trial court had no power to order its release to whichever claimants came before it.
5. In my considered view Miscellaneous Application No. 49 of 2015 was misguided as it was brought subsequent to the first refusal by the court in Criminal Case 1168 of 2014. There is no basis for this court to order the sitting aside of the lower court declining order as the same was properly made.
6. There is no question of forfeiture in so far as the court proceedings are concerned. Equally, there is no basis in the context of the present application for this court to order the Forest Officer to release the stated goods. This revision request has no merit and is accordingly reject.

Written and signed at Narok this **29th** day of **September, 2015**

C. MEOLI

JUDGE