



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL REVISION NO. 48 OF 2014

(From the original conviction and sentence in Criminal Case No. 1045 of 2014 in the Senior Principal Magistrate's Court at Kwale – **Hon. Njagi RM**)

GWARU RAIAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

This application for review was brought by way of a letter from Aminga & Company Advocates dated the 30th day of October, 2014.

The grounds are that the applicant pleaded guilty to a charge of cutting down trees without permit contrary to section 52(1) as read with section 2 of the Forests Act No. 7 of 2005.

The applicant was ordered to pay a fine of Ksh. 150,000/= in default one (1) year imprisonment.

The applicant its contended that he was a first offender and the Sentence was harsh and excessive.

Section 52(2) of the Forests Act is the punitive section and it provides,

“Any person who contravenes the provisions of sub section (1) of this section commits an offence and is liable on Conviction to a fine of not less than fifty thousand shillings (50,000/=) to imprisonment for a term of not less than six (6) months or to both fine and imprisonment”.

In the present case the Accused was found with three poles of indigenous Mkongolo tree at Mrima Forest. He was Sentenced to a fine of Ksh. 150,000/= in default one (1) year imprisonment.

He was treated as a first offender. The fine of Ksh. 150,000/= and in default one year imprisonment is rather harsh considering the circumstances of this case where the Accused was found with three poles

probably for domestic use. The Sentence of Ksh. 150,000/= in default one (1) year imprisonment is hereby altered and varied to that of a fine of Ksh. 50,000/= in default six (6) months imprisonment. In the event he has served the imprisonment term to be set at liberty unless otherwise lawfully held.

Ruling delivered dated and signed this 19th day of November, 2014.

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M. MUYA

JUDGE

19TH NOVEMBER, 2014

In open Court in the presence of:-

Mr. Masila for the State

Absence of the applicant and Counsel.