



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS
Revision Case 27 of 2012

FRANCIS MUREITHI NDUNGU.....APPELLANT

VERSUS

REPUBLIC RESPONDENT

RULING ON REVISION

The application before me is for Revision. It arises from the orders which the learned trial magistrate made when sentencing the accused, FRANCIS MUREITHI NDUNGU.

He was convicted for the offence of Transporting Forest Produce without a lawful permit **contrary to section 54 (1) (a) (b) and (e) of the Forest Act.**

The said conviction was founded upon the applicant's own plea of "Guilty".

The facts giving rise to the charges preferred against the applicant were that on 29th February 2012, at 6.20p.m, the applicant was found illegally transporting 140 bags of charcoal using a motor vehicle Registration Number KAX 754R, a Mitsubishi Fighter, without a movement permit/Authority from the Director of Kenya Forest Service. When those facts were read out to the applicant, he admitted that they were accurate. It is then that he was convicted.

Immediately after conviction, the prosecution asked the learned trial magistrate to order that the 140 bags of charcoal be forfeited to the state.

On his part, the applicant applied for leniency.

The trial court imposed a fine of KShs.100,000/-, in default the applicant was to serve 4 months imprisonment.

The trial court also ordered that the 140 bags of charcoal be forfeited to the state, together with the vehicle in which they were being ferried. When making the orders for forfeiture, the learned trial magistrate observed as follows;

"The 140 bags of charcoal to be forfeited to the state since no cause or reasons is given to the satisfaction of the court as to why the motor vehicle registration No. KAX 754R should not be forfeited

to the State. The said motor vehicle is thus forfeited to the state.”

From the record, it is clear that the learned trial magistrate was alive to the need to have the owner of the vehicle given an opportunity to show cause why the vehicle should not be forfeited.

Regrettably, however, as the prosecution did not seek the forfeiture of the vehicle, and because the applicant had no reason to respond to something that had not been asked for, the order for the forfeiture of the vehicle was made prematurely. It is therefore irregular. For that reason, I order that the orders made on 1st March 2012 be varied by the removal therefrom of the orders for the forfeiture of the lorry.

The order for the forfeiture of the vehicle ought not to have been made without first giving to the owner of the vehicle an opportunity to be heard. The rules of Natural Justice dictate that before any person is condemned, such as through the forfeiture of his property or the deprivation of his right to freedom, the court should give him a hearing.

Ideally, this court ought to then refer the case back to the trial court, to enable the learned trial magistrate give an opportunity to the owner of the vehicle to show cause why her vehicle should not be forfeited to the state. However, this court also notes that the owner of the vehicle has made available documents to demonstrate that she is indeed the owner of the said vehicle.

She said that she did not know that the applicant, who had hired the vehicle in issue, would use it to transport charcoal without the required licence from the Director of Forests.

In effect, Ms ROSE NJOKI MUTURI, has already demonstrated why the vehicle should not have been forfeited to the state. Her affidavit and that of the accused person have not been challenged by the respondent or anybody else. In the circumstances, I find that there would be no need to still refer the matter back to the trial court. Such a step would simply be a duplication of the exercise which this court has already undertaken.

In the circumstances, I do now direct that the Mitsubishi Fighter Lorry, Registration Number KAX 754R be released forthwith to Ms ROSE NJOKI MUTURI.

Dated, Signed and Delivered at Nairobi, this 17th day of May, 2012.

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FRED A. OCHIENG
JUDGE