



**REPUBLIC OF KENYA**

**High Court at Eldoret**

**Revision Case 177 of 2012**

**REPUBLIC.....PROSECUTOR  
VERSUS**

**ISAAC AMBANI.....ACCUSED**

**REVISION**

By a letter dated the 19th October, 2012 the firm of Anassi Momanyi & Company Advocates referred this matter to this court seeking orders to revise and set aside an order for forfeiture.

The main ground relied upon in support of the revision was that the order for forfeiture was illegal and incompetent as there was no conviction.

The case before the trial court was that the accused person was found in possession of five (5) tonnes of cedar timber valued at Kshs. 400,000/- the timber was found loaded on motor vehicle registration number KAK 830T.

The Accused herein was charged with the offence of failing to comply with a lawful requirement made by a Forest Officer contrary to Section 54(1) (c) of the Forest Act.

After a full hearing the Accused was acquitted on the grounds that there as insufficient evidence adduced that could lead to a conviction and that the prosecution had failed to prove its case beyond reasonable doubt. Notwithstanding the acquittal the trial magistrate ordered the forfeiture of the motor vehicle used to ferry the timber under Section 55 (1) (c) of the Forest Act.

The order for forfeiture of the motor vehicle is what has initiated this Application for revision under Section 362 of the Criminal Procedure Code.

This court has perused the provisions of Section 55 (1) (c) of the Forest Act which provides that;

**55 (1) where a person is convicted of an offence of damaging, injuring or removing forest produce from the any forest, the court may in addition to any other ruling order;**

**(c) the forest produce be removed and any vessels, vehicles tools or implements used in the commission of the offence, be forfeited to the service.**

From the reading of the above section this court finds that the focus is on the following

**“..... conviction on an offence .....”**

**“..... commission of the offence .....”**

The unfortunate reality is that the criminal prosecution has been unsuccessful and therefore there was no resultant conviction. Without a conviction there can be no sentencing in the form of criminal forfeiture.

There must be proof that a crime was committed by someone and there is also need for proof that the vehicle (the lorry) was used to commit the crime.

Forfeiture is a deterrent sentence used to abate a nuisance or to prevent the use, time and again of a vehicle or vessel for the same purpose.

For the reasons stated above this court finds that this is a suitable case in which it can exercise its power to examine the order made by the subordinate court relating to “**forfeiture**” and subject the same to revision.

The application for revision is hereby allowed and the order of forfeiture is hereby set aside.

This court notes that to date the lorry remains unclaimed and that there is no prayer for its release.

The court orders that the Kenya Forest Service do issue a Gazette notice to and thereafter proceed to administratively forfeit and dispose of the unclaimed vehicle.

It is so ordered.

**DATED AND DELIVERED AT ELDORET**

**THIS 22ND DAY OF NOVEMBER 2012**

**A. MSHILA**  
**JUDGE**