



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

MISC. CIVIL APPLICATION NO. 41 OF 2011

JOHN NJAGI MUCHIRA

JOSEPH GICHOBI GIKANGI

DICKSON NGURETI KARUGUMU.....APPLICANTS

FRANCIS NJIRU GIKANGI

SIMON MUGO MUCHIRA

VERSUS

REPUBLIC.....RESPONDENT

RULING

Pursuant to the provisions of *Section 362* of the Criminal Procedure Code, the proceedings in respect of **Gichugu S.R.M.C. Cr. C. No. 403 of 2011, R =Vs= John Njagi Muchira & four others** was placed before this court for my perusal. In exercise of my supervisory power of revision I proceeded to examine the aforesaid record. The purpose of exercising the supervisory jurisdiction under *Section 362* of the Criminal Procedure Code, is to enable this Court to satisfy itself as to the correctness, legality or propriety of any findings, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

The record shows that John Njagi Muchira, Simon Gichobi Gikangi, Dickson Nguneti Karugumi, Francis Njirugi Kangi and Simon Mugo Muchira, hereinafter referred to as the 1st, 2nd, 3rd, 4th and 5th applicants were arraigned before Honourable T. M. Mwangi, learned Senior Resident Magistrate, to face a charge of illegal felling of state forest produce contrary to Section 52(1) (1) as read with Section 52 (2) (1) of the Kenya Forest Service Act No. 7 of 2005. The particulars of the offence are that on the 11th day of July 2011 at about 6.35 p.m. at Mt. Kenya National State Forest, Kamweti area in Kirinyaga East District within Kirinyaga County, the Applicants unlawfully cut down state forest produce, loaded on two Mercedes lorries as follows: 29 logs of pines loaded on motor vehicle registration KBE 837e and 29 logs of pine trees loaded on motor vehicle registration No. KAR 860Y without authority from the District Forester. The record shows that the Applicants were recorded to have pleaded guilty to the charge. They were then convicted on their own plea of guilty. The Applicants were each sentenced to pay a fine of Ksh.40,000/= in default to serve 5 months imprisonment. It would appear the learned Senior Resident Magistrate issued a notice to show cause upon the owners of motor vehicles registration numbers KBE 837E and KAR 860Y for 13th July 2011. He also reserved the issue relating to the recovered logs and power saw to be dealt with on the same date. I have carefully considered the facts outlined by the court prosecutor. It is alleged that on 11th July 2011 the Applicants were found inside Kamweti area within Mount Kenya National Forest by Kenya wildlife Service wardens who were on routine patrol. It is alleged that the Applicants were found cutting down trees with power saws and loading the same on the aforementioned motor vehicles. It is further alleged that they had no authority from the District Forester to cut down those trees. The Applicants were arrested and taken to Kianyaga Police Station where they were charged with the offence mentioned hereinabove. The two lorries and power saws were taken and kept as exhibits at Kianyaga Police Station. It is curious to note that the Applicants were convicted and sentenced even before the vital exhibits to wit the two lorries, logs and power saws were produced as exhibits in evidence. A careful perusal of the record will obviously lead to the conclusion that the particulars of the charge were not established by the facts as outlined by the court prosecutor. It was incumbent upon the prosecution to tender in evidence as exhibits the two lorries, the logs and the power saws. It would appear the Police intentionally withheld the aforesaid evidence with the sole purpose of shielding the real culprits in this saga. Furthermore, the record does not indicate whether the Applicants were given an opportunity to mitigate before being sentenced. When these proceedings were placed before me, I called upon Mr. Ng'ang'a, learned advocate for the Applicants and Miss Ngalyuka, learned Senior State Counsel, to address me over this matter. Miss Ngalyuka conceded before this court that there was no conviction in which a sentence can flow.

In the end and for the above reasons, I exercise my revisionary power of revision in favour of the Applicants by setting aside the sentence. The Applicants are hereby set free forthwith unless lawfully held. I direct that the fines if paid be refunded to the Applicants forthwith.

Dated and delivered at Nyeri this 6th day of October 2011.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Nganga for the applicant and Miss Maundu for the State.