



## REPUBLIC OF KENYA

JUSTUS NDUHIU KIBOI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

### JUDGMENT

The appellant, Justus Nduhiu Kiboi was charged with the offence of **transporting forest produce without a permit** contrary to **section 52(1) as read with sub-section 52(2) of the Forest Act 2005 Laws of Kenya**. The particulars of offence state that on the 5<sup>th</sup> day of January 2009 along Nakuru-Nyahururu road at Bahati Forest within Nakuru District of the Rift Valley Province being the driver of a motor vehicle registration number KAA 535L Isuzu Canter was found transporting 15 (*fifteen*) logs of Cyprus trees valued at Kshs 45,000/= without a permit from the Chief Forest Conservator.

The appellant was convicted on his own plea of guilt, upon conviction he was sentenced to a fine of Kshs 60,000/= in default to serve eight months imprisonment. Additionally the 14 logs and the motor vehicle registration number KAA 535L were ordered to be forfeited to the Kenya Forest Service under the provisions of **section 55 C of the Forest Act of 2005**.

Being aggrieved by the sentence, the appellant appealed on the grounds that he was convicted and sentenced to serve a sentence, which is not known to law. The appellant also faulted the sentence and forfeiture of the motor vehicle, which he contended, was excessive and punitive in the circumstances. This appeal was opposed by the State; the learned State Counsel Mr. Njogu supported the sentence, which is based on the provisions of **section 55(1)(c) of the Forest Act**.

This appeal turns only on sentence, the record of proceedings indicate that the charge was properly read to the appellant. When he pleaded guilty, the facts were clearly read to him and he confirmed they were correct, that is when he was convicted and sentenced.

The facts of the case are that on 5<sup>th</sup> January 2009 at 2.00 a. m. administration police from D.O.'s office Bahati were on patrol duties. They spotted motor vehicle registration number KAA 535L Isuzu Canter along Nakuru-Nyahururu road near Bahati Forest. They stopped the motor vehicle which they had seen emerge from the Bahati forest a gazetted forest. On searching the motor vehicle it was carrying 14 logs of Cyprus trees. They requested to be furnished with a permit by the driver who is the appellant. The appellant had no licence by the District Forester. He was arrested and escorted to the D.O.'s office Bahati. The following morning the forester was contacted. He confirmed that he had not issued any permit to the appellant. The appellant was charged with the offence herein. The motor vehicle and the logs were produced as exhibits in this case.

The provisions of **section 348 of the Criminal Procedure code** provide that:

***“No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.”***

Following the above provisions of the law, the only issue is the determination of whether the sentence passed by the learned Senior Principal Magistrate is illegal. By dint of the provisions of **section 55 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 any forest, the court may in addition to any other ruling order –**

**(a) That such person pay to the forest owner, by way of compensation, a sum equal to the determined value of the forest produce so damaged, injured or removed and where the value cannot be estimated, ten thousand shillings for each offence:**

**(b) If it is proved to the satisfaction of the court that the person so convicted is the agent or employee of another person, that other person to pay by way of compensation to the forest owner, the value of the forest produce, unless after hearing that other person, the court is satisfied that the offence was not due to his negligence or default;**

**(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:**

**Provided that the value of the forest produce shall be either the commercial value of the forest produce or the cost of repairing the damage caused to biodiversity as a result of the activities complained of.”**

The above is in addition to the prescribed sentence which is a fine of not less than 50,000/= or imprisonment for a term not less than 6 months. I find that the sentence passed by the trial magistrate is in accordance with the provisions of the law. The principles that guide this court when dealing with an appeal on sentence are set out in the case of **Ogalo s/o Owuor [1954] E.A.C.A at page 270** where the Court of Appeal held as follows: -

**“The court does not alter a sentence on a mere ground that if the member of the court had been trying the appellant they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial judge unless it is evident that the judge acted upon some wrong principle or overlooked some material facts if the sentence is manifestly excessive in view of the circumstances of the case.”**

Taking the totality of the facts before the trial court, the sentence passed against the appellant, the provisions of the law and the submissions herein I find no justifiable reason why this court should interfere with a sentence that is legal. Sentencing is an exercise of the trial court’s discretion. It cannot be interfered with merely because another court would have given a lesser sentence. Accordingly I find no merit in this appeal, which is dismissed. The trial court’s decision is upheld.

**Judgment read and signed on 14<sup>th</sup> day of May 2009**

**M. KOOME**

**JUDGE**