



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO**

Misc. Crim. Appli. 12 of 2008

LOCHAB BROS LTD APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

REVISION

I: Background

1. On the 7th of November, 2008 three accused persons appeared before the trial magistrate at Bomet charged with the offence of

“Transporting Forest Produce without licence contrary to section 52(1) (a) as read with Section 54(1) (E) and 52(2) of the Forest Act No. 7 of 2005 Laws of Kenya”

2. The three pleaded guilty to the offence that particulars being

“ On the 6th of November, 2008 at Roadblock along Mulot-Bomet Highway at Bomet District of the Rift Valley Province were jointly found transporting 40 bags of charcoal of an estimated value of Kshs. 120,000/= using a lorry make Mitsubishi Registration No. KZJ 606 without a licence from Direction Kenya Forest Service”

3. The prosecution led evidence in the statement of particulars that the 40 bags of charcoal was found hidden on the truck with hay covering the concealed bags. They were unable to produce such permit giving them permission to ferry the said bags.

4. The three were convicted on their own plea of guilty and stated they were employees of the owner of the said vehicle, one of whom was a mechanic. The trial magistrate called for a probation report but adjourned the Court before this, to inspect the actual charcoal, to 11th November, 2008. On the 13th November, 2008, the report was ready and all the three accused were placed on a two year Probation. An advocate appeared for the owner of the lorry and prayed that the said lorry be released on grounds that the employees were never authorized to carry the charcoal. This application was opposed who by the prosecution asked the lorry to be forfeited to the state.

5. The trial magistrate adjourned to 14th November, 2008 where he wrote a ruling in which he stated that the lorry, used in the commission of the offence, be forfeited to the Kenya Forest Service as per the law.

6. Apart from the charcoal which had been forfeited, the said content of the vehicle being a tractor engine and some cattle feed was released to the owner of the said vehicle.

7. The owner files revision proceedings.

11: Procedure

8. In a Revision matter, powers is granted to the High Court of Kenya to supervise the subordinate Courts. This is made by way of a letter written to the Registrar High Court of Kenya. The said Registrar would immediately open a file, call for the lower Court proceedings and place the file before the Hon. Judge.

9. The Hon. Judge would read the lower Court file to examined whether there is any unlawful orders and or procedure undertaken by the trial Court. If there was any unprocedural conduct of the lower Court proceedings the court would administratively conduct a revision order on the said High Court file of the subordinate Courts proceedings.

10. It is very important to note that at this state there is no appearance to Court by any party including the advocate for the applicant. The Hon. Judge though, has a discretion to allow such appearance to be made only if the Court is of a view that the matter requires further clarification.

11. Procedure under a revision in criminal matters is otherwise done administratively.

III: Opinion

12. The task of the High Court is to supervise and monitor any illegality and or procedural correctness of the lower Court proceedings.

13. The matter before me has been looked at. The lower Court proceedings and procedures has been perused and this Court finds no irregularity or incorrectness in the conduct of the proceedings in the lower Court.

14. The issue I would probably note is that of the forfeiture of the lorry to the state to be used in the Kenya Forestry Service.

15. From the ruling of the trial magistrate on this point I noted that he was given powers under Section 55(1) (c) of the Forest Act 2005.

“ 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).....

b).....

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”.

16. The magistrate rightly considered this and made orders accordingly and only after the owner of the vehicle was given a hearing through his advocate as to whether the forfeiture should be made or not.

17. To my understanding the trial magistrate had no choice in the matter. The vehicle transporting the forest produce in this case the charcoal was to be forfeited.

18. I nonetheless have the task to see in this matter whether any illegality occurred in a wrong at the decision before court. I see none and as a result I accordingly dismiss this Revision as having no bases.

DATED this 15th day of December, 2008 at Kericho

M.A. ANG'AWA

JUDGE

Advocate - Nil