



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

CRIMINAL REVISION CASE NO. 183 OF 2020

JAMES KARANI MAGIRI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This file has been placed before me pursuant to a letter written by **Hon. S. Mbungi, Chief Magistrate**, dated **27th April, 2020**. The issue in question was brought to his attention by a letter dated the same date, the **27th April, 2020**, authored by **Hon. M. Onkoba**, Principal Magistrate, Mwingi Law Courts.

2. The contention of the learned Magistrate is that following an order made regarding the disposal of the exhibit that was not in accordance with the elaborate procedure set out in the registry manual therefore rendering execution impossible.

3. The request for revision is therefore made pursuant to the provisions of **Section 363** of the **Criminal Procedure Code** that provides thus:

“(1) A subordinate court of the first class may call for and examine the record of any criminal proceedings of a subordinate court of a lower class than it and established within its local limits of jurisdiction, for the purpose of satisfying itself as to the legality, correctness or propriety of any finding, sentence or order recorded or passed, and as to the regularity of the proceedings.

(2) If a subordinate court acting under subsection (1) considers that a finding, sentence or order of the court of lower class is illegal or improper, or that the proceedings were irregular, it shall forward the record with its remarks thereon to the High Court.”

4. And in exercising the discretion set out in **Section 362** of the **Criminal Procedure Code**, I must satisfy myself of the correctness, legality or propriety of the order made and the regularity of the proceedings of the Subordinate Courts.

5. **James Karani Magiri**, the Accused in the Subordinate Court was charged with the offence of **Transporting Charcoal without Charcoal Movement Permit** contrary to **Rule 14(1)(a)** as read with **Rule 20** of the **Forestry (Charcoal) Rules of 2009**. Particulars of the offence were that on the **10th day of November, 2019** in **Mwingi Township** in **Mwingi Central Sub-County** within **Kitui County**, was found transporting approximately 40 bags of charcoal along Garissa-Thika road on board motor-vehicle registration number **KCA 793H Hyundai Lorry** without a valid charcoal movement document.

6. Having admitted the charge, facts of the case were presented by the Prosecution which he similarly admitted. Consequently, he was convicted accordingly and sentenced. This was followed by a Court order to this effect:

“The charcoal is forfeited to the state to be disposed by the court executive officer in accordance with the procedure laid down in the registry manual for disposal of exhibits by way of public sale. The proceeds be deposited with the court as revenue. The vehicle be given back to the owner upon payment of fine or serving of sentence.”

7. According to the Registry Manual, exhibits are to be disposed off according to the Court order. The Directorate of Supply Chain Management has the duty of auctioning the exhibits and proceeds of the sale revert to the state. This therefore means that the order made by the trial Court directing proceeds of sale to be deposited in Court as Revenue was improper which would have called for Revision.

8. However, being vested with supervisory power over the trial Court being subordinate to this Court, I must inquire into the regularity of the

proceedings that were conducted.

9. The **Forests (Charcoal) Regulations, 2009** were made pursuant to **Section 59** of the **Forests ACT, 2005 (Cap 385)**. **Regulation 14** provides thus:

“(1) No person shall, move charcoal or charcoal products from one place to another unless –

(a) he is in possession of a valid charcoal movement permit issued under these Regulations and is operating in conformity with the terms and conditions of such permit; and

(b) he has a certificate of origin for the charcoal the subject of the charcoal movement permit duly signed by the relevant association or person from whom charcoal is to be obtained; or

(c) he has a receipt from the vendor.

(2) A charcoal movement permit as prescribed in Form 4 of the Second Schedule may, on application to and approval by the Service, be issued to a person or an association specifying the vehicle or vessel conveying charcoal or charcoal products, on payment of prescribed fee. (3) In the case of a vehicle or vessel, identification and registration details of the vehicle or vessel shall be entered in the charcoal movement permit before the same is issued.

(4) The charcoal movement permit shall not be transferred to or used for any other vehicle or vessel unless approved by the Service.

(5) Any person who contravenes this Regulation shall be guilty of an offence and liable to a fine of not less than fifty thousand shillings or to imprisonment for a term of not less than six months, or to both such fine and imprisonment.”

Regulation 20 provides thus:

“It shall be presumed, prima facie, until the contrary is proved, that the person in possession of a charcoal movement permit is duly valid.”

The effect of conviction is provided by **Regulation 22** which provides as follows:

“(1) The conviction of the holder of a licence or permit or his authorized agent for any offence under the Act or these Regulations, unless the Board in writing otherwise directs, have the effect of canceling the licence or permit and such instrument shall cease to be valid from the moment of conviction.

(2) Any person convicted of an offence under these Regulations shall, unless the Board in writing otherwise directs, stand disqualified from holding a licence or permit related to the provisions under which he has been convicted, for a period of one year from the moment of conviction.

(3) The holder of any licence or permit which is cancelled pursuant to subregulation (1) of this Regulation shall, within fourteen days from the date of conviction surrender the licence or permit to the Service.”

10. The **Forests Act, 2005** was however repealed by the **Forest Conservation and Management Act, 2016 (No. 34 of 2016) (Vide Section 76 of the Act)**.

11. After repeal of a law, no penalty can be enforced and/or punishment inflicted in violation of its provisions. In the case of **Regina vs. Denton, 18 QB 761; 118 Reprint 287 (1852) Lord Campbell** stated that:

“The general Rule is that a statute from the time that is repealed cannot be acted upon ...”

12. Therefore, it was erroneous for the trial Court to act upon a repealed statute. The conviction and ultimate sentence that resulted were null and void which I quash and direct as follows:

i. The fine imposed, if paid shall be refunded.

ii. The exhibit shall be released to the owner.

iii. The trial Court shall direct the individual to remove the exhibit from where it is stored within a certain timeframe.

13. It is so ordered.

Dated, Signed and Delivered via Email this 8th day of May, 2020.

L. N. MUTENDE

JUDGE