



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NANYUKI**

**CRIMINAL REVISION NO 2 OF 2020**

**SOLOMON JAMES OKUMA APUDO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(From the Order of Forfeiture of Motor Vehicle Registration KCQ 097A, Isuzu FVZ Lorry, dated 02/01/2020 in Maralal PM Criminal Case No 446 of 2019 – A Gachie, SRM)***

**R U L I N G**

1. Upon application by the Applicant herein, **SOLOMON JAMES OKUMU APUDO**, I have called for and examined the record of the trial court in respect to the order of forfeiture the subject of this ruling.
2. The Applicant was not an accused before the trial court; however, he was the owner of motor vehicle registration number **KCQ 097A**, **Isuzu FVZ** lorry, by which some contraband (which formed the basis of the charges against the accused persons) was being transported.
3. The accused persons were convicted upon their own pleas and were duly sentenced. The trial court then, *inter alia*, ordered forfeiture of the motor vehicle to the **Kenya Forest Service** under **section 68(1) (c)** of the **Forest Conservation and Management Act, No 34 of 2016**. In so doing the trial court apparently ignored, or was not aware of, the requirements of **section 389A (1)** of the **Criminal Procedure Code, Cap 75** which provides -

***“389 A.(1) Where, by or under any written law (other than section 29 of the Penal Code), any goods or things may be (but are not obliged to be) forfeited by a court, and that law does not provide the procedure by which forfeiture is to be effected, then, if it appears to the court that the goods or things should be forfeited, it shall cause to be served on the person believed to be their owner notice that it will, at a specified time and place, order the goods or things to be forfeited unless good cause to the contrary is shown; and, at that time and place or on any adjournment, the court may order the goods or things to be forfeited unless cause is shown by the owner or some person interested in the goods or things.***

***Provided that, where the owner of the goods or things is not known or cannot be found, the notice shall be advertised in a suitable newspaper and in such other manner (if any) as the court thinks fit.”***

4. **Section 68** of the **Forest Conservation and Management Act** aforesaid does not provide the procedure by which forfeiture is to be effected. It was therefore incumbent upon the trial court to have recourse to **section 389A** of the **Criminal Procedure Code**. It did not. The result was that the Applicant was deprived of his property without due process of the law contrary to constitutional protection under **Article 40** of the **Constitution of Kenya, 2010**.
5. The order of forfeiture of motor vehicle registration number **KCQ 097A** was thus illegal, and learned prosecution counsel was right in not opposing the application at hand.
6. In the circumstances, the said order of forfeiture is hereby set aside. The motor vehicle in issue shall be released to the Applicant forthwith unless otherwise lawfully held. It is so ordered.

**DATED AND SIGNED AT NANYUKI THIS 9<sup>TH</sup> DAY OF JULY 2020**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 9<sup>TH</sup> DAY OF JULY 2020**