



**REPUBLIC OF KENYA**

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

**CRIMINAL REVISION NO. 134 OF 2018**

**REPUBLIC..... APPLICANT**

**-VERSUS-**

**SILALE OLE TUMATE.....RESPONDENT**

*(Being Revision from the original conviction and sentence dated 26<sup>th</sup> July 2018 in the Chief Magistrate's Court at Narok in Criminal Case No. 279 of 2018, Republic V. Silale Ole Tumate.)*

**ORDER ON REVISION**

1. This matter has been reported for orders to this court by the Deputy Registrar.
2. The respondent was convicted and sentenced to a fine of Shs.200,000/= in default to serve one year imprisonment, by the resident magistrate, in respect of removing forest produce without a permit from the managing director, contrary to section 64(1) (a) as read with section 64(2) of the Forest Conservation Management Act. The particulars of the offence allege that the respondent was found removing 300 cedar posts valued at Kshs.90,000/= using a Massey Ferguson tractor registration No.KBE 994G.
3. At the conclusion of the trial, the tractor that was used in transporting the cedar posts was ordered to be returned to its owner (Saimon Ntayia Ole Sempele). This was done upon application by his advocates (M/S Ochege Onduso).
4. The tractor used to transport the cedar posts was subject to forfeiture. The provisions of section 389A of the Criminal Procedure Code (Cap. 75) require that a notice to show cause why the tractor should not be forfeited to the state. This was not done. It is clear that the tractor be returned to its owner was contrary to the law.
5. In the light of those provisions of the law and the circumstances of the offence, the magisterial order which returned the tractor to the owner was unlawful.
6. It therefore follows that the said order is hereby set aside. In its place the matter is hereby sent back to the trial court to comply with the provisions of section 389A of the Criminal Procedure Code.
7. According to section 64(1)(a) as read with section 64 (2) of the Forest Conservation and Management Act, the maximum sentence provided for is Shs.100,000/= or to imprisonment of a term not exceeding six (6) months or both. It therefore follows that the sentence imposed of Shs.200,000/= in default one (1) year imprisonment is unlawful and I hereby set it aside. In its place, I hereby substitute a sentence of Sh.50,000/= in default to serve three (3) months imprisonment. Those are the orders of this court.

**Order in revision dated this 9<sup>th</sup> day of November, 2018**

**J. M. Bwonwonga**

**Judge**

9/11/2018