

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL MISC. CASE NO. 4 OF 2016

AJERICA NDONDO MWENDA APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

Ajerica Ndongdo Mwenda filed this Miscellaneous Application dated 19/2/2016 seeking a variation or setting aside of the order issued by Hon. J. M. Irura, SRM Isiolo in CRM 116 of 2016 on 15/2/2016 in which she ordered the forfeiture of the motor vehicle Registration No. KCF 823Q Make Isuzu Lorry/Truck. The application is made by the owner of the said vehicle who denies having been party to CRC 116/2016 Isiolo, where four accused persons were charged with the offence of transporting Forest produce without a movement permit contrary to **Section 52 (1) (a)** as read with **Section 52(2) of the Forest Act No. 7 of 2005**. The four accused pleaded guilty to the offence; were convicted and sentenced.

The state did not oppose the application for reasons given in the written submissions filed in court and dated 22/2/2016.

I agree with the submissions by the State because from the attached documents, NN1, i.e Registration Certificate of the vehicle, the subject lorry KCF 823Q is registered in the joint names of the Co-operative Bank of Kenya Ltd and the applicant herein, Ajerica Ndongdo. The two joint owners of the vehicle were not party to the proceeding before Isiolo Court.

I also agree that the trial court did not comply with **Section 55 (1) (b) and (c)** in ordering the forfeiture of the vehicle because since the owner of the vehicle was not charged, the court should have given them a hearing to show cause why the vehicle should not be forfeited. They were condemned unheard which is contrary to the tenets of fair hearing.

In the end, I grant the prayer setting aside the order of forfeiture made in CRC 116/2016 Isiolo on 15/2/2016. The Police to hold the lorry till further orders of this court.

DATED, SIGNED AND DELIVERED THIS 1ST DAY OF MARCH, 2016.

R.P.V. WENDOH

JUDGE

1/3/2016

PRESENT

Mr. Mulochi for State/Respondent

Mr. Nyauchi Holding Brief for Mr. Inoti for Applicant

Accused Present