



IN THE HIGH COURT AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 607 OF 2013

BETWEEN

ROY HAULIERS LTD.....PETITIONER

AND

HON. ATTORNEY GENERAL..... 1ST RESPONDENT

SENIOR RESIDENT MAGISTRATE'S

COURT AT NAROK.....2ND RESPONDENT

KENYA FOREST SERVICES.....3RD RESPONDENT

THE DIRECTOR OF

PUBLIC PROSECUTIONS.....4TH RESPONDENT

RULING

1. By an order issued on 10th November 2013, the learned magistrate in **Narok Senior Resident Magistrates Court Criminal Case No. 1791/2013** made the following order:-
 1. *60 bags of charcoal forfeited to the State (Kenya Forest Service).*
 2. *Motor Vehicle Scania Truck KBS 259G and Trailer ZD 9893 forfeited to the State (Kenya Forest Service) taking into account section 52 of the Forest Act as read together with Muya v Republic (2004) 1KLR 515. Kenya Forest Service to collect vessels.*
 3. *Each fined minimum fine of Kshs.50,000/= in default 8 months imprisonment.*
2. The petitioner herein is the owner of the motor vehicle and has moved the Court by the petition seeking orders of release of the vehicle principally on the ground that the petitioner who was not party to the criminal proceedings and was not given an opportunity to be heard before the order of

forfeiture was given.

3. The respondents have, in their written submissions, conceded that the petitioner was not given an opportunity to be heard. I agree that the concession is proper as the right to a fair hearing is fundamental to our system of justice under the Constitution and is indeed protected by **Articles 47 and 50** of the Constitution and underpinned by its principles and values (See *Prime Salt Works Ltd v Kenya Industrial Plastics Ltd* [2001] 2 EA 528).
4. Even where a statutory enactment does not expressly provide for a hearing such a right is inherent and the court must give a party the opportunity to be heard before condemnation. **Section 55(1)(c)** of the *Forest Act* under which forfeiture is made provides that, “*where a person is convicted the court may in addition to any other ruling order (c) the forest produce be removed and any vessels vehicles, tools or implements used in the commission be forfeited to the service.*” In *Peterson Njue v Maralal Senior Resident Magistrate and Another* NKR HC JR No. 64 of 2009 [2010]eKLR the court concluded that **section 55((1)(c)** of the *Forest Act* under which the order of forfeiture was made, was not automatic upon conviction and the party affected had a right to be heard. (See also *Felista Wanjiku Muchiri v Nyahururu Principal Magistrate and Another* NKR HC JR No. 91 of 2009 [2009]eKLR.) In this case the petitioner had a right to be heard in view of their interest in the motor vehicle and the likelihood of the adverse order being made.
5. In the circumstances, the order that commends itself to the Court is as follows;
 1. **The order of forfeiture issued by the Court in Narok Senior Resident Magistrates Court Criminal Case No. 1791/2013 against Motor Vehicle Scania Truck KBS 259G and Trailer ZD 9893 be and is hereby set aside.**
 2. **The issue of forfeiture is remitted back to the learned magistrate to hear the petitioner and thereafter make an appropriate order without delay.**
 3. **The vehicles shall remain the custody of the Court or the Kenya Forest Service as the case may be until the application is heard and determined.**
 4. **There shall be no order as to costs.**

DATED and DELIVERED at NAIROBI this 12th February 2014

D.S. MAJANJA

JUDGE