



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

Criminal Review 1 of 2008

PETER NAKITARE

JONAM ETIANG RASTO =====APPLICANTS

VERSUS

REPUBLIC =====RESPONDENT

RULING

The applicant, **JOTHAM ETIANG RASTO**, was not an accused in Kitale Cr. Case No.3454 of 2007 in which one Peter Nakitare was charged with the offence of transporting Forest produce contrary to section 52 (a) as read with section 52 (20 of the Forest Amendment Act 2005 of the laws of Kenya. The latter was found guilty convicted and fined Shs.50, 000/= and in default six months imprisonment. As the forest produce was found too have been transported in motor vehicle registration No. KAH 516E (which belonged to the applicant), the trial court ordered its forfeiture.

In his application dated 31/1/2008, the applicant averred that he was not given an opportunity to be heard before the order for forfeiture was made and that the applicant was not an accused person in the Criminal Case No.3454 of 2007 in which the forfeiture order was made.

When the application came up for hearing on 6/3/2008, Mr. Maliro learned counsel for the applicant urged the court to set aside the forfeiture. Mr. Mutuku the learned Senior Principal State Counsel conceded the application on the grounds that the order for forfeiture was against section 389 (a) of Cap 75. He observed that the applicant was not a party to the criminal case and was not given an opportunity to be heard with regard to forfeiture. In his view, the rules of natural justice with regard to the right to be heard were not observed.

I have perused the application herein and the affidavit sworn on 31/1/2008 by the applicant. No replying affidavit was filed by the Respondent and the averments of fact in the applicant's affidavit remain uncontroverted. The applicant was not privy to the Criminal Case No.3454 of 2007. He was not given an opportunity to be heard when the forfeiture was being ordered. I am satisfied that the order forfeiture was in the circumstances of this case improper.

In the circumstances, I reverse the order dated 30/01/2008 forfeiting the Lorry Reg. No. KAH 516 E in Kitale

CMCR. Case No.3454 of 2007 and order that the said Lorry Reg. No. KAH 516 E shall be released to the applicant forthwith without charge.

It is so ordered.

Dated at Kitale on 11th March 2008.

G.B.M. KARIUKI

JUDGE

11/3/2008

11/3/2008

Coram G.B.M KARIUKI – JUDGE

John Ngitira – C/Clerk

Mr. Maliro for the Applicant

Mr. Mutuku for the Respondent

Court: - Ruling read in open court at 2.30 p.m. on 11/3/2008 in the presence of both counsel.

G.B.M. KARIUKI

JUDGE

11/3/2008



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