

**ALITUHA EDWARD :::::::::::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**UGANDA :::::::::::::::::::::::::::::::::::::: RESPONDENT**

**BEFORE: HON. JUSTICE VINCENT WAGONA**

**RULING**

This ruling is in respect of an application brought under Article 26 of the Constitution, Section 33 of the Judicature Act Cap 3, and Section 50 of the Criminal Procedure Code Act Cap. 116 seeking the following orders:

- 20     **Grounds of the Application:**

The application was supported by the affidavit of the applicant who averred thus:

1. That he is the owner of Motor Vehicle Registration No. UAW 984N, Canter, Blue in color. That he had hired out the same to a one Gramsdsk Robert at a weekly sum of Ugx 400,000/=.

14/11/2020

2. That he searched for his vehicle and the said Gramsdsk Robert until he discovered that the said vehicle had been parked at National Forest Authority Office (NFA).

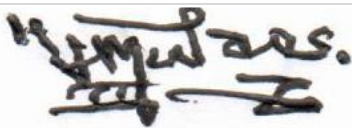
3. That upon inquiry from the officials of NFA, he was informed that the vehicle had been impounded and or confiscated and forfeited for being used by the said Gramsdsk Robert in cutting and transporting timber contrary to the provisions of the National Forestry and Tree Planting Act 2003.

4. That he never conspired with the said Gramsdsk Robert nor had any knowledge that he intended to use his vehicle for illegal purposes. That he searched for Gramsdsk Robert so as to recover his vehicle and he found out that the vehicle had been impounded on his own plea in court on 9<sup>th</sup> January 2020.

5. That he is the owner of the said vehicle and never committed any offense and was not involved in any illegal activities. That the trial magistrate exercised his jurisdiction with material irregularity when he ordered for his vehicle to be confiscated and forfeited to NFA without being heard.

6. That the order of confiscation and forfeiture prejudiced him as the owner of the said vehicle. That he had knowledge that the said vehicle has never been disposed of and that court has inherent powers to revise the orders of the trial magistrate and set aside the same and order for the delivery of the vehicle in issue to the applicant as the owner of the same.

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7. That the applicant has been deprived of use of his truck and it is in the interests of justice that this application is allowed.

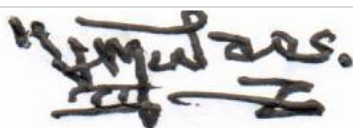
The application and the submissions were served upon the Respondent who never responded. The applicant's former lawyer wrote a letter to court dated 22<sup>nd</sup> October 2020 informing court that the Respondent was served and that they should be given one and half weeks to file their reply and written submission. The same letter was served upon the Resident State Attorney Fort Portal on the same day 22<sup>nd</sup> October 2020 and no response was filed by the Respondent. I therefore find that the Respondent was duly served thus I will proceed to determine the application ex-  
parte.

#### **Issues:**

- 1. Whether the trial magistrate rightly ordered for confiscation and forfeiture of motor vehicle no. UAW 984N, Canter, Blue in color.**
- 2. Remedies available.**

#### **Consideration of the application:**

The Criminal Procedure Code Act (CPCA) does not define the term revision. However, the *Black's Law Dictionary, 9<sup>th</sup> Edition* by Bryan and Garner gave a persuasive definition of the term as a re-examination or careful review for correctness or an altered version of work. Therefore, revision entails the High Court re-examining the record or orders made by the lower court to satisfy itself as to the



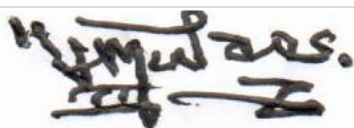
propriety or correctness or regularity or legality of the proceedings or orders made by the lower Courts.

The power of revision is derived from the general and supervisory powers of the High Court under *Section 17 of the Judicature Act*. Section 17 is to the effect that the High Court shall exercise general powers of supervision over magistrate's courts.

(2) With regard to its own procedures and those of the Magistrates' Courts, the High Court shall exercise its inherent powers—(a) to prevent abuse of process of the court by curtailing delays, in trials and delivery of judgment including the power to limit and discontinue delayed prosecutions; (b) to make orders for expeditious trials; (c) to ensure that substantive justice shall be administered without undue regard to technicalities.

The main concern under the above section is to ensure that justice is administered without due regard to technicalities. *Section 48 of the Criminal Procedure Code Act* further provides that, the High Court may call for and examine the record of any criminal proceedings before any Magistrates' Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the Magistrates court.

Section 50 (1) of the Criminal Procedure Code grants the High Court powers where upon perusal and examination of the proceedings before the Magistrate's Court finds in those proceedings an error material to the merits of any case or involving a miscarriage of justice has occurred to; (a) in the case of a conviction, exercise any

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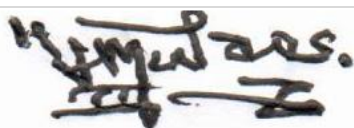
of the powers conferred on it as a court of appeal by sections 34 and 41 and may enhance the sentence; (b) in the case of any other order, other than an order of acquittal, alter or reverse the order. However, before court exercises such discretion, the DPP must be give a right to be heard by virtue of section 50(2) of the CPCA.

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Further section 50 (5) of the CPCA allows any person aggrieved by any finding or order made by the magistrate's court to petition the High Court for revision of the same. It provides thus: *“Any person aggrieved by any finding, sentence or order made or imposed by a magistrate's court may petition the High Court to exercise*  
10 *its powers of revision under this section; but no such petition shall be entertained where the petitioner could have appealed against the finding, sentence or order and has not appealed.”*

In this case the applicant contended that the orders of court in criminal case No. 039  
15 of 2019 where he was not a party, affected his interest in ***Motor Vehicle Blue Canter, Registration No. UAW 994N***. That Court ordered for the confiscation and forfeiture of his vehicle to NFA without according him a right to be heard. I therefore find that he is an aggrieved person for purposes of section 50 (5) of the CPA.

20 The accused person in the lower court was convicted on two counts on his own plea of guilty. On count I, the convict was charged with illegal cutting of forest produce for timber contrary to section 14 (1) (2) of the National Forestry and Tree Planting Act 2003. On count II, he was charged and convicted of illegal dealing in forest produce contrary to section 32 (1) (a) and (2) of the National Forestry and Tree  
25 Planting Act 2003. The trial magistrate sentenced the accused person on count I to

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pay a fine of 50 currency points in default to serve a sentence of five years. On count II, he was sentenced to a fine of 30 currency point in default to serve a sentence of three years and both sentences were to run concurrently.

5 Court further ordered the convict to forfeit the impounded timber and motor vehicle Registration No. UAW 984N Isuzu tipper used to carry timbers to NFA. The applicant herein contends that the truck in issue is his and the orders issued by Court were made without hearing from him.

10 Section 84 of the National Forestry and Tree Planting Act 2003 provides thus:

***Power of court to confiscate and order forfeiture***

15 *(1) The court by which a person is convicted of an offence under this Act may order the forfeiture of—*

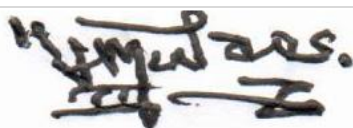
*(a) any forest produce in respect of which the offence was committed or which was found in that person's possession; or*

20 *(b) any vehicle, machinery, weapon or other thing which was used to commit the offence or which was capable of being used to take forest produce found in his or her possession.*

*(2) Any forest produce forfeited under subsection (1) shall, unless otherwise ordered by the court, be sold or otherwise disposed of—*

*(a) as the responsible body may direct; or*

25 *(b) where the responsible body has been convicted of the offence, sold or otherwise disposed of as the Minister directs.*

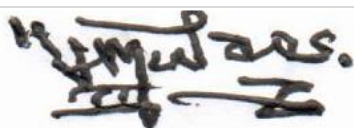
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It is clear from the above that Court may exercise its discretion in addition to any sentence imposed, to order for the confiscation and forfeiture of a forest produce found in possession of the convict or a vehicle, machinery or weapon used to commit the offense. It appears from the reading of the section that Court is not duty bound to inquire into whether the vehicle, machinery or weapon in issue belonged to the convict, if it was used in the commission of the offence.

In this case the facts accepted by the accused before he was convicted were that the motor vehicle was found loaded with timber and the suspects run away and the police carried the vehicle and took it to the police station and waited for the owner to come and claim the vehicle. It was the accused who turned up at the police to claim the vehicle. In allocutus, the accused prayed that his vehicle be released to him. In other words, the accused claimed ownership of the vehicle. The accused did not inform court that the vehicle belonged to the applicant, upon which the court may have invited the applicant to be heard. The trial magistrate cannot in these circumstances be blamed for not hearing from the applicant before making the orders complained about.

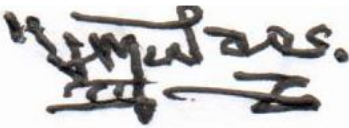
In this application, the applicant has not brought the evidence of the convict to support his claim of ownership of the vehicle as against the convict's earlier claims in court and at police to the effect that the vehicle belonged to the convict.

The only evidence the applicant has produced to support his claim of ownership is an agreement of purchase of the vehicle without more. He has not produced a

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registration book in his names or in his possession. In **Fred Kamanda Uganda Versus Uganda Commercial Bank, Civil Appeal No. 17 of 1995** the Supreme Court stated that a registration card is evidence of ownership as the person in whose name the vehicle is registered is presumed to be the owner of the vehicle unless  
5 proved otherwise.

The applicant has not adduced adequate evidence to justify my interference with the orders of the trial magistrate. I therefore find no merit in this application and it is hereby dismissed with no orders as to costs.



Vincent Wagana  
**High Court Judge**  
**FORT-PORTAL**

**DATE: 15.09.2023**

