**Muya v Republic**

**Division:** Court of Appeal of Kenya at Nyeri

**Date of judgment:** 14 May 2004

**Case Number:** 61/04

**Before:** Tunoi, Githinji JJA and Ringera AJA

**Sourced by:** LawAfrica

**Summarised by:** C Kanjama

*[1] Criminal procedure – Appeal – Right of appeal – Whether Court of Appeal had jurisdiction to hear*

*appeals from applications for revision – Section 361(7) – Criminal Procedure Code (Chapter 75).*

*[2] Criminal procedure – Revision – Penalty of forfeiture ordered – Motor vehicle used to unlawfully*

*transport forest produce forfeited – Whether Applicant had a right to be heard before forfeiture –*

*Whether trial Magistrate had acted unlawfully in ordering forfeiture – Section 14(2) – Forests Act*

*(Chapter 385).*

**Editor’s Summary**

Two accused persons were charged and convicted of the offence of cutting and removing forest produce contrary to the Forest Act. The said statute provided for payment of compensation to the forest officer by the convict or his principal, and for forfeiture of tools or implements used in the commission of the offence. Pursuant to these provisions, the court ordered the forfeiture of the motor vehicle used in the carriage of the unauthorised forest timber. The Appellant, unrelated to the accused persons, applied to the High Court to exercise its powers of revision and order release of the forfeited motor vehicle. The Applicant claimed that he was the owner of the said motor vehicle, and that he had not been given an opportunity to be heard prior to the making of the said forfeiture order. The High Court refused to grant the order of revision on the ground that no illegality or impropriety had been committed by the trial Magistrate. On appeal.

**Held** – The Court of Appeal has jurisdiction to entertain appeals from refusal to exercise power of criminal revision. There is no requirement under the Forest Act that any person be heard before an order for the forfeiture of tools or implements used in the commission of an offence. The proceedings before the trial Magistrate did not disclose any illegality or impropriety and the refusal to make any orders of revision was justified. Appeal dismissed.

**No cases**