



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Muiruri & another (Criminal Revision E193 of 2022)
[2023] KEHC 279 (KLR) (27 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 279 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E193 OF 2022
LN MUGAMBI, J
JANUARY 27, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

JAMES MUIRURI 1ST RESPONDENT

FESTUS MUSEMBI 2ND RESPONDENT

*(A revision from a conviction and sentence of the Chief Magistrate's Court at Gatundu,
(R.N. Ng'ang'a, RM) dated 9th March, 2022 in Traffic Case No. E048 of 2022)*

RULING

1. This is an application under Section 362 – 364 of the [Criminal Procedure Code](#). The applicant is the Republic through the Director of Public Prosecutions.
2. The revision is directed at the sentences for payment of fines imposed by the lower court in Gatundu Magistrate's court MCTR No. E048 /2022.
3. The applicant (Appellant) contends that the sentences that were imposed on the respondents, James Muiruri and Festus Musembi by the Lower Court were not in conformity with the prescribed fines for exceeding the load limit contrary to section 56 (1) as read with section 58 (1) and rule 41 (2) of the [Traffic \(amendment\) Rules](#), 2008 of the [Traffic Act](#) Cap. 408 Laws of Kenya.
4. I have however noted that the revision application was not brought to the attention of the respondents. They were not present when the DPP appeared before me on 23/1/2023. This is because they were not informed about these proceedings.
5. Should I find merit in the State/Applicant's contention as prayed in this revision application, then the likelihood would be that very high fines than those preferred by the Lower Court will be imposed



on the respondents. Such an eventuality without their participation will hit the respondents like a thunderbolt. This would be so because upon finalisation of their matter before the lower court, they were not made aware that the applicant had subsequently initiated further proceedings challenging the sentence meted out on them by the Lower Court.

6. Disposing this review application without prior notice to them will thus be prejudicial.
7. In arriving at this decision, I am guided by the Court of Appeal in *J.J.W v Republic* (2013) eKLR in which it sounded words of caution whenever a court is addressing a situation that could lead to stiffer sentences than those initially preferred. It held as follows:

“...The court in enhancing a sentence already awarded must be aware that its action in so doing may have serious effects on the appellant. Because of such situation, it is a requirement that the appellant be made aware before the hearing or at the commencement of the hearing of his appeal that the sentence is likely to be enhanced...”

8. I thus find that in spite of the proviso to section 364(2) (which the State urged me to apply by overlooking the presence of the respondents; it is fair to both parties if this application would be decided after the respondents have been duly notified of its existence.
9. I thus direct that the application dated 22/4/2022 and filed in this Court by the DPP/Applicant on 26/4/2022 be served on the respondents within the next fourteen (14) days and evidence of service of the same be placed on record.
10. I further order that this matter be placed before the Presiding Judge, Kiambu High Court on 15th February, 2023 to give any other necessary directions for the hearing of this revision.

RULING DATED AND DELIVERED AT KIAMBU THIS 27TH DAY OF JANUARY 2023.

L.N. MUGAMBI

JUDGE

In the presence of :-

Coram:

Court Assistant: Kinyua

Appellant: DPP - Mr. Gacharia

For Respondent: Absent

COURT

Ruling delivered virtually.

L.N. MUGAMBI

JUDGE

