



**Nyamai v State (Criminal Revision E279 of 2022)  
[2023] KEHC 17407 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 17407 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CRIMINAL REVISION E279 OF 2022  
GMA DULU, J  
APRIL 27, 2023**

**BETWEEN**

**MLINGE NYAMAI ..... ACCUSED**

**AND**

**STATE ..... PROSECUTOR**

**RULING**

1. Before me is a request by the State through the Director of Public Prosecution for review of sentence.
2. The request was made to this court through a letter dated September 9, 2022 and in relation to the sentence meted out by the Magistrate's court in Voi CM Criminal Case No. Traffic E120 of 2022 Republic =Versus= Mlinge Nyamai.
3. The complaint of the Director of Public Prosecutions is that the statutory penalty for the offence for which the respondent pleaded guilty was a fine of not less than Kshs. 200,000/= for a first offender as provided for under Rule 41 of the Traffic Rules 1953, but that the Magistrate imposed an illegal sentence of a fine of only Kshs. 80,000/=, and in default to serve 4 months imprisonment.
4. In his oral submissions, the Prosecuting Counsel Mr. Sirima stated that the state had encountered challenges in serving the respondent, and urged this court to determine their request for revision of sentence without hearing any party.
5. I have perused the trial court file and indeed the sentence imposed was a fine of Kshs. 80,000/= for an excess load of 10,800kgs, while the statutory minimum sentence is a fine of Kshs. 200,000/=
6. The request for revision of sentence herein will however not succeed as it seeks to enhance the sentence imposed against someone on whom no appeal has been filed, nor was he served with the notice of intention to enhance the sentence.



7. In my view, granting the request to review the sentence imposed will violate the right to fair hearing of the respondent provided under article 50(2) of the [Constitution](#), as his absence from these revision proceedings means that he has not been availed a chance to know the complaint against him for him to respond to it.
8. I thus decline the request by the Director of Public Prosecutions for review of sentence herein upwards, and I dismiss the same. This dismissal of the request for revision, however does not close the option of appeal of the Director of Public Prosecutions, which can be done in accordance with the law applicable.

Orders accordingly.

**DATED, SIGNED AND DELIVERED THIS 27<sup>TH</sup> DAY OF APRIL, 2023 AT VOI.**

**GEORGE DULU**

**JUDGE**

