



**JM v Republic (Criminal Revision E099 of 2023)
[2023] KEHC 21096 (KLR) (26 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21096 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL REVISION E099 OF 2023
WA OKWANY, J
JULY 26, 2023**

BETWEEN

JM APPLICANT

AND

REPUBLIC RESPONDENT

(eing a Revision on Conviction and Sentence in Traffic Case No. E047 of 2023 at Nyamira Chief Magistrate’s Court by Hon. W. K. Chepseba, Chief Magistrate on 26th June 2023)

RULING

1. The Applicant herein was convicted on his own plea of guilty for 4 counts under the Traffic Act cap 403 Laws of Kenya, namely riding a motorcycle on a public road without a riding license contrary to section 103B (5) as read with section 103B (7) of the Traffic Act (Count I), riding a motorcycle on a public road without an insurance cover contrary to section 103B (3) as read with section 103B (7) of the Traffic Act (Count II), failing to put on a head helmet while riding a motorcycle on a public road contrary to section 103B (1) as read with section 103B (7) of the Traffic Act (Count III) and failing to put on a reflective jacket while riding a motorcycle on a public road contrary to section 103B (1) as read with section 103 B (7) of the Traffic Act (Count IV).
2. The trial court sentenced him to pay a fine of Kshs. 2,000/= each for count 1 and count 2 or in default, to serve 1 month’s imprisonment for each charge and Kshs. 1,000/= each for counts 3 and 4 or in default to serve 1 month’s imprisonment for each charge.
3. Through an Application filed on July 11, 2023, the Applicant seeks a review of his sentence on the following grounds: -
 1. That he pleaded guilty to the charges and saved the court precious time.
 2. That he is a young person of 17 years and a first offender.



3. That he is currently in Form 2 at Riomego PAG Secondary School and his admission number was 1422.
 4. That he was being raised by a single mother who is a peasant farmer and who could not afford the fine.
 5. That he was extremely remorseful for the offence committed and promised to be a good citizen.
 6. That he prays to the Court to accord him a non-custodial sentence or release him so that he continues with his secondary education.
4. The Respondent, through Mr. Chirchir, learned counsel for the state, did not oppose the Application and conceded to the review of the sentence on the basis that the Applicant was a student.
 5. This Court is vested with powers to supervise subordinate courts under article 165 of *the Constitution*. The said Article stipulates as follows: -
 - (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
 6. Sections 362 of the *Criminal Procedure Code* also vests revisionary jurisdiction on the High Court as follows: -
 362. “Power of the High Court to Call for Records”

The High Court may call for and examine the record of any criminal proceedings before any subordinate 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 any such subordinate court.
 7. Section 364 of the *Criminal Procedure Code* outlines the manner in which such jurisdiction shall be exercised thus: -
 364. “Powers of the High Court on Revision”
 - (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—
 - a. in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
 - b. in the case of any other order other than an order of acquittal, alter or reverse the order.



- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

- (3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed that might have been inflicted by the court which imposed the sentence.
- (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
- (5) When an appeal lies from a finding a sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”

8. On Revision, the Court must satisfy itself that the decision of a subordinate court is correct, proper and legal. While this Court appreciates that sentencing is a reserve of the trial court, it holds the firm position that judicial discretion must be exercised judiciously and in conformity with the dictates of *the Constitution* and statutory provisions.
9. In the present case, the Applicant is reported to be a minor aged 17 years. He presented his Certificate of Birth Serial No (particulars withheld) which reveals that he was born on October 11, 2006 and was therefore 17 years old when he committed the offences. I have also confirmed through the Head teacher’s letter dated July 4, 2023 that he is a student at [Particulars Withheld] Secondary School as he stated in his Application.
10. I have noted that the Applicant was a first offender and I considered the nature of the offences for which he was charged and convicted. In my view, the trial court ought to have considered mitigating circumstances in order to arrive at an appropriate sentence. The East Africa Court of Appeal in *Mbogo v. Shab* (1968) EA 93 explained the circumstances under which a court may interfere with the discretion of a subordinate court as follows: -
- “A Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that he misdirected himself in some matter and as a result arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge was clearly wrong in the exercise of his discretion and that as a result there has been misjustice”.
11. The Judiciary Sentencing Policy Guidelines, 2016, expects courts to consider mitigating and aggravating circumstances during sentencing (see paras. 23.4 and 23.5). Paragraph 23.8 of the Guidelines list the age of an offender and being a first offender as mitigating circumstances. I find that the trial court ought to have considered the Applicant’s age and determined a more appropriate sentence in the interests of justice.
12. In line with the principles in *Mbogo v Shab* case (supra), I find reason to interfere with the trial court’s exercise of discretion in sentencing the Applicant herein. It is my finding that the sentence imposed by the trial court was harsh and excessive in the circumstances of this case. I therefore find that the period of one month that the Applicant has already spent in prison custody is sufficient punishment



for the offences. Consequently, I order that the Applicant be set at liberty forthwith unless otherwise lawfully held.

Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIA MICROSOFT TEAMS THIS
26TH DAY OF JULY 2023.**

W. A. OKWANY

JUDGE

