



**Muna v Republic (Criminal Case E005 of 2023)
[2023] KEHC 24681 (KLR) (31 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24681 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL CASE E005 OF 2023**

FR OLEL, J

OCTOBER 31, 2023

BETWEEN

RACHAEL MUMBE MUNA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

A. Introduction

1. Before court is a revision application filed under Section 362 as read with Section 364 of the *Criminal Procedure Code* Cap 75 laws of Kenya. The applicants have requested this court to review the proceedings and examined the record in Kithimani SPMCR no.E028/2023 for purposes of satisfying itself to the correctness, legality or propriety of the court finding, sentence or order passed and/or the regularity of the proceedings before the subordinate court aforesaid.

B. Brief Facts

2. The 1st applicant was charged with the offence of permitting the use of a laden motor vehicle on a road with a load greater than the load specified contrary to Section 56(1) as read with Section 58(1) and Rule no.41(2) of the *traffic Act* (Amendment) Rules 2008, The traffic Act Cap 408 Laws of Kenya. The particulars of the offence were that on the 24th day of February 2023 at about 13.56hours along Matuu – Kithimani road at Kithimani area of Machakos County being the owner of motor vehicle registration no. KCU 014F make Isuzu FSR permitted the use of the said motor vehicle on the said road with a load greater than the load specified by carrying gross vehicle weight of 22,700kgs instead of the limited 18,000kg less 2,000kgs tolerance hence an overload of 2700kgs as per the attached KENHA weighbridge ticket.
3. The applicant pleaded guilty to the offence. The facts were read out to her and she confirmed that the facts were correct. The applicant’s advocate Mr. Mbaluka pleaded for leniency and submitted that the



applicant was hypertensive and requested for reasonable fine. The Motor vehicle was financed by bank and the overload was an error. The trial court did consider the applicants mitigation and sentenced her to pay a fine of Kshs 50,000/= or in default to serve six (6) months in Jail.

4. The applicant submitted that they were arrested on 24.02.2023 and arraigned before court on 27.02.2023 where the charges were read out in Kiswahili. The applicant pleaded guilty but that was due to a misunderstanding and confusion arising out of the failure to be presented with documents supporting the charge (charge sheet, statements and any documents be relied upon by the prosecution and required in law). The court proceeded to sentence the applicant to a fine of Ksh.50,000/= which was in excess and beyond the presented schedule of the Act. Further the applicant faulted the prosecution for failing to produce the calibrated receipt used to arrive at the finding that the lorry had excess load as alleged. The failure to produce the receipt was an omission which lead to the court arriving at an unjust decision.

Reasons for Review

5. The applicant submitted that there was an error apparent on the face of the record. In that the order was made without due regard on the law relating to plea taking and that the court failed to observe the rights of the applicant as envisaged under Article 49 of the *Constitution* of Kenya 2010. In particulars the court was faulted for failing to consider the fact that the suspect had not been supplied with witness statements and documents to be relied upon to enable her know the facts and charges she was facing.
6. Secondly the Magistrate was faulted for convicting the applicant yet the substance of the charge were not scientifically proved as required in law and the court also erred in fining the applicant Ksh.50,000/= which was in excess of the fare bracket of Ksh.15,000/= to Ksh.30,000/= as provided for In law. The sentence was harsh and irregular.
7. The applicant urged the court to thus set aside the conviction and sentence. He relied on High Court of Kenya at Meru Traffic case no.58.2019 Stephen Githaka Mbugua versus Republic and Naivasha Criminal Revision No. E002/2020 officer of the director of public prosecution versus Batuli.

Analysis of Law

8. I have considered the application as filed and the submissions of the applicant.
9. The powers of the High court in revision are contained in Section 362 through to 366 of the *Criminal Procedure Code* (cap.75). Section 362 specifically provides as follows: -

“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”.



10. What the High Court can do under its revision jurisdiction is stated under Section 364 of the *Criminal Procedure Code* Cap 5, which states as follows: -

- “(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 section 354, 357 and 358, and may enhance sentence;
 - (b) In the case of any other order 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 had had an opportunity of being heard either personally or through an advocate in his own defense. 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 than 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 arises from a finding, sentence or order and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.”

11. Under this proceeding’s as aptly captured under section 364(5)” Where an appeal arises from the finding, sentence or order and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.”

12. The courts hands are tied. The applicant had a right of appeal but chose not to do so. By law this court is not allowed to entertain her application. This court lack jurisdiction to do so.

13. I find that this is not an application where the courts discretion can be exercised in favour of the applicant nor can her complaints be determined on merits.

14. I find this application is not merited and hereby dismiss the same.

15. It is hereby so ordered.

RULING WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 31ST DAY OF OCTOBER 2023.

FRANCIS RAYOLA OLEL

JUDGE

