



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BOMET
CRIMINAL REVISION NO. E070 OF 2022
HILLARY RONO.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT

RULING ON REVISION

1. The accused, Hillary Rono was charged with the following five (5) counts:

Count One

Causing death by dangerous riding contrary to Section 46 of the Traffic Act

Count Two

Failing to report an accident contrary to Section 73 (1) (3) as read with Section 75 of the Traffic Act

Count Three

Riding an uninsured motorcycle on a public road contrary to Section 103B as read with Section 103B (7) of the Traffic Act.

Count Four

Riding a motorcycle without a driving licence contrary to Section 103B (5) as read with Section 103B (7) of the Traffic Act.

Count Five

Riding a motorcycle on a public road without a reflective jacket contrary to Section 103B (1) as read with Section 103B (7) of the Traffic Act.

2. On 5th January 2022, the accused pleaded guilty on all counts and he was convicted on all the five counts.

3. The trial court then passed the following Sentences which for the purpose of clarity, I will reproduce verbatim:

“Accused is hereby sentenced to serve **1 year** imprisonment for Count No. 1

Pay a fine of **20,000/=** in default **6 months** imprisonment for Count No. 2

Pay a fine of **6,000/=** in default **6 months** imprisonment for Count No. 3

Pay a fine of **1,000/=** in default **14 days’** imprisonment for Count IV and last but not least pay fine of **500/=** in default **14 days** imprisonment for Count V

The sentences in Count No, II, III IV V run concurrently and consecutively after serving the sentence Count No. 1”.

4. In an application for the Revision of the Sentences filed on 3rd February 2022, the applicant prayed that this court revise the Sentences dated 5th January 2022 and set him free.

APPLICANT'S SUBMISSIONS.

5. The applicant submitted that the police had violated his rights under Article 49 of the Constitution as they took 7 days before they brought him before court. That the circumstances surrounding his arrest and prosecution showed that his trial was not fair.

6. It was the applicant's submission that his parents and those of the deceased entered into a reconciliation agreement dated 21st December 2021 and his family paid Kshs 40,000. That this was not brought to the attention of the court.

7. In respect to the Sentences, the applicant submitted that under Count 1, the Sentence was harsh and excessive because he had pleaded guilty and that his family assisted in meeting the deceased's hospital bill. That the court did not seek to know whether the accused was a first offender and that his mitigation was not considered before Sentencing. It was the applicant's further submission that the Sentence should be zero years.

8. It was his submission that the fine of Kshs 20,000 in Count 2 was illegal as the Act provided for a maximum of Kshs 5,000 and the minimum of zero. In regards to Count 3 and 4, the fines of Kshs 6,000 and 1,000 respectively were high considering the financial means of the accused. It was his further submission that the fine of Kshs 500 for Count 5 was fair.

9. It was the applicant's prayer that he was a first offender and was apologetic. That he was a family man and his family was dependent on him. It was his further prayer that this court revises the Sentence passed on 5th January 2022 and set him free.

THE RESPONDENT'S SUBMISSIONS.

10. The Respondent submitted that under Count 1, the Traffic Act provided for a sentence that did not exceed ten years. That the applicant pleaded guilty and the one year sentence was not harsh or excessive.

11. With regard to Count 2, the Respondent submitted that the fine of Kshs 20,000 was harsh and excessive. With regard to Counts 3 and 4, the Respondent submitted that the fines of Kshs 6,000 and Kshs 1,000 respectively were not excessive but lawful.

12. It was the Respondent's submission that the trial court applied the relevant provisions of the law hence the applicant's rights were not prejudiced save for Count 2.

DETERMINATION.

13. This court's revision jurisdiction is exercised under the provisions of Section 362 of the Criminal procedure code which states:

“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”.

14. For this revision, the powers of this court are provided for under Section 364 (1) (a) of the Criminal Procedure Code which provides:

“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 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”.

15. In the case of JOSEPH NDUVI MBUVI V REPUBLIC (2019) eKLR Odunga J persuasively held that:

“In my view, the revisionary jurisdiction of the High Court should only be invoked where there are glaring acts or omissions but should not be a substitute for an appeal. In other words, parties should not argue an appeal under the guise of a revision. It is for this reason that the decision whether or not to hear the parties or their advocates is discretionary save for where the orders intended to be made will prejudice the accused person. As was stated by the High Court of Malaysia in PUBLIC PROSECUTOR vs. MUHARI BIN MOHD JANI AND ANOTHER [1996] 4 LRC 728 at 734, 735:-

“The powers of the High Court in revision are amply provided under section 325 of the Criminal Procedure Code subject only to subsections (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice...If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion...This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case”.

16. In mitigation, the accused prayed for forgiveness and stated that his family depended on him.

17. I shall now address each count and the attendant penal sanction. In regards to Count One, the accused was charged with causing death by dangerous driving contrary to Section 46 of the Traffic Act which states:

“Any person who causes the death of another by driving a motor vehicle on a road recklessly or at a speed or in a manner which is dangerous to the public, or by leaving any vehicle on a road in such a position or manner or in such a condition as to be dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road and the amount of traffic which is actually at the time or which might reasonably be expected to be on the road, shall be guilty of an offence whether or not the requirements of section 50 have been satisfied as regards that offence and be liable to imprisonment for a term not exceeding ten years and the court shall exercise the power conferred by Part VIII of cancelling any driving licence or provisional driving licence held by the offender and declaring the offender disqualified for holding or obtaining a driving licence for a period of three years starting from the date of conviction or the end of any prison sentence imposed under this section, whichever is the later”.

I find the Sentence of One (1) year imprisonment to be fair, just and indeed lenient.

18. For Count 2, he was charged with failing to report an accident contrary to Section 73 (1) (3) of the Traffic Act. The Penal Section for this offence was Section 75 of the Traffic Act which states:

“Any person who contravenes or fails to comply with any of the provisions of this Part shall be guilty of an offence and liable on first conviction to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding three months, and on each subsequent conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or to both”.

The prosecution has conceded that the Sentence handed out under this count by the trial court was excessive. I agree that the Sentence passed was unlawful and excessive. In the circumstances therefore, the Sentence of Kshs 20,000 and in default 6 months’ imprisonment is set aside and replaced with a Sentence of a fine of Kshs 2,000 and in default 2 months’ imprisonment.

19. For Count 3, he was charged with riding an uninsured motorcycle on a public road contrary to Section 103B. The Penal Section for this offence was Section 103B (7) which states:

“A person who contravenes or fails to comply with the provisions of this section commits an offence and is liable to a fine not exceeding ten thousand shillings or, in default of payment, to imprisonment for a term not exceeding twelve months”.

I find the Sentence of Kshs 6,000 fine and in default 6 months excessive. The same is replaced with a Sentence of a fine of Kshs 2,000 and in default 2 months’ imprisonment.

20. For Count 4, the accused was charged with riding a motorcycle without a driving licence contrary to Section 103B (5). The Penal Section is the same as the one described in the aforementioned paragraph. It is therefore my finding that the Sentence of Kshs 1000 fine and in default 14 days imprisonment was lawful and just.

21. There was no challenge to the Sentence passed in Count 5. Nonetheless I have considered and found it lawful and just and therefore it remains undisturbed.

22. The Criminal Procedure Bench Book at page 116 provides that:

“The sentences imposed should be geared towards achieving the following objectives set out in the sentencing policy guidelines (paragraph 4.1):

- i. Retribution.
- ii. Deterrence.
- iii. Rehabilitation.
- iv. Restorative justice.
- v. Incapacitating the offender.
- vi. Denouncing the offence, on behalf of the community”.

At the very same page, at paragraph 24, the Bench Book states:

“Generally, a maximum sentence should not be imposed on a first offender unless there are aggravating circumstances”.

SENTENCING

In the end, I exercise my revisionary jurisdiction and substitute the sentences as follows: -

23. The accused is hereby sentenced to serve **1-year** imprisonment for Count 1

Count 2.

Pay a fine of **2,000/=** in default **2 months'** imprisonment.

Count 3

Pay a fine of **2,000/=** in default **2 months'** imprisonment.

Count 4

Pay a fine of **1,000/=** in default **14 days'** imprisonment.

Count 5

Pay a fine of **500/=** in default **14 days** imprisonment.

24. The default Sentences in Count No, 2, 3, 4 and 5 which cumulatively amount to 5 months shall run concurrently and consecutively after serving the sentence Count No. 1.

25. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 28TH DAY OF APRIL, 2022

.....

R. LAGAT-KORIR

JUDGE

Ruling delivered in the absence of the Applicant, and in the presence of Ms. Boyon holding brief Mr. Muriithi for the State, Mr. Kipngetich holding brief J.K Rono for the Applicant and Kiprotich (Court Assistant).