



**Ngoru v Republic (Criminal Revision E405 of 2021)  
[2022] KEHC 3247 (KLR) (Crim) (25 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 3247 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL REVISION E405 OF 2021  
LN MUTENDE, J  
MAY 25, 2022**

**BETWEEN**

**MOSES NYAGA NGORU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Moses Nyagah Ngoru, the Applicant, was charged as follows:

Count 1 Causing death by dangerous driving contrary to Section 46 of the *Traffic Act*, Cap 403 laws of Kenya. Particulars being that on the 8<sup>th</sup> day of April, 2018 at about 0450 hours at Co-operation along Waiyaki Way within Nairobi County, being the driver of motor vehicle Registration Number KAV 326H make Nissan matatu did drive the said vehicle at a speed which was dangerous to the public and other road users, by swerving off the road to the left side and fatally knocked down a pedestrian, namely, Joyce Njeri Karanja

Count 2 Careless driving contrary to Section 49(1) of the *Traffic Act*, Cap 403 laws of Kenya. Particulars being that on the 8<sup>th</sup> day of April, 2018 at about 0450 hours at Co-operation along Waiyaki Way within Nairobi County, being the driver of a motor vehicle Registration Number KAV 326H make Nissan matatu did drive the said vehicle without due care and attention to other road users, by driving at a high speed which he was unable to control whereby the vehicle veered off the road to the left and knocked down a pedestrian, namely, Joyce Njeri Karanja there causing her serious injuries.

Count 3 Being un-authorized driver contrary to Section 103C (3) of the *Traffic Act*, Cap 403 Laws of Kenya. Particulars being that on the 8<sup>th</sup> day of April, 2018 at about 0450 hours at Co-operation Along Waiyaki Way within Nairobi County, being a person employed by KMO Sacco as a



Conductor of motor vehicle Registration Number KAV 326H make Nissan matatu, did drive the said vehicle on a public service road knowing that he was not authorized to operate public service vehicle as a driver.

Count 4 Driving a motor vehicle on a public road without driving licence contrary to Section 30(1) as read with Section 30(7) of the Traffic Act Cap 403 Laws of Kenya. Particulars being that on the 8<sup>th</sup> day of April, 2018 at about 0450 hours at Co-operation along Waiyaki Way within Nairobi County, being the driver of motor vehicle Registration Number KAV 326H Make Nissan matatu drove the said vehicle without a driving licence.

In the alternative he faced a charge of – Failing to carry a driving licence contrary to Section 36(1) as read with Section 36(3) of the Traffic Act Chapter 403 laws of Kenya. Particulars being that on the 8<sup>th</sup> day of April, 2018 at about 0450 hours at Co-operation Along Waiyaki Way within Nairobi County, being the driver of motor vehicle Registration Number KAV 326H make Nissan matatu, failed to produce a driving licence on being so required by a police officer.

2. Having been taken through full trial he was convicted and sentenced to serve three (3) years imprisonment on the first count and was discharged on Count 3 and Count 4 under Section 35(1) of the Penal Code.
3. By an application filed herein on 29<sup>th</sup> November, 2021, he seeks review of the sentence imposed to preferably a non-custodial one.
4. In an affidavit in support of the application, the applicant expresses remorse and calls upon this court to consider that he was a first offender.
5. In response, the State through learned Counsel Ms. Ntabo opposed the application on grounds that the sentence provided for the offence is up to ten (10) years imprisonment but the applicant was sentenced to serve three (3) years imprisonment. That the applicant has not demonstrated an illegality, impropriety or incorrectness that would call for review of the sentence.
6. I have considered the application and rival submissions by the parties herein and examined the record of the lower court. Revisionary jurisdiction of this court is donated by Section 362 of the Criminal Procedure Code (CPC) that 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.

7. In the Malaysian case of *Public Prosecutor v Muhari bin Mohd Jani and Another* [1996] 4 LRC 728 at 734, 735, the court delivered itself thus:

“.....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.”



8. Section 46 of the *Traffic Act* provides as follows:

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 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.

9. I have also read the probation report filed which indicates that the applicant was a repeat offender, therefore, the trial court did not misdirect itself in meting out the sentence that was legal. In the premises the application fails and is dismissed.

10. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25<sup>TH</sup> DAY OF MAY, 2022.**

**L. N. MUTENDE**

**JUDGE**

IN THE PRESENCE OF:

Applicant

Ms. Kibathi for the State

Court Assistant - Mutai

