



**Meshack Mwangangi Musee v Republic (Criminal Revision
E168 of 2022) [2022] KEHC 11617 (KLR) (24 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 11617 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL REVISION E168 OF 2022**

TM MATHEKA, J

MAY 24, 2022

BETWEEN

MESHACK MWANGANGI MUSEE- APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Meshack Mwangangi Musee was charged with the offence of Careless Driving Contrary to Section 49 (1) of the [Traffic Act](#) Cap 403 Laws of Kenya in Nakuru Chief Magistrate’s Traffic Case Number 952 of 2017.
2. When plea was first read on 20th July 2017, the applicant pleaded not guilty. On 13th October 2017, the record shows that the accused told the court that because “matter had taken over 6 months in court, and the complainant was unable to attend court because he was wheelchair bound.” He was ready to change his plea. The record says; “.... and to save court time and I have opted against my will, has (sic) I believe I was not to blame in this matter and I now wish to change my plea.”
3. The prosecution did not object, and the court proceeded to take the accused persons plea, afresh.
4. When the facts were read, it was indicated that the accused had caused the accident because “he failed to give way to the oncoming motorcycle which the complainant was riding, and hit the motorcycle resulting in the complainant suffering serious injuries.”
5. The Accused is said to have been driving motor vehicle registration KBQ 541Q Toyota Corolla and the motorcycle the complainant was riding was KMDW 641A Yamaha.
6. The court entered a plea of guilty and convicted him on his own plea.



7. In mitigation the accused told the court, that it was the sports motorcycle that came and hit him, and even pushed his motor vehicle ten (10) metres across the road. He said that it was the motorcycle that hit him on the front side of the motor vehicle as he had not taken the right turn.
8. He proceeded to state that the motor cyclist was the one to blame. He sought the court's leniency and asked that the blame be shared.
9. In sentencing the accused person, the learned trial magistrate observed that the accused person had explained in detail how the Road Traffic Accident had occurred, and that the complainant had contributed to the accident as he was speeding. The accused person was then sentenced to pay a fine of Kshs. 20,000/= in default to serve four (4) months imprisonment.
10. On 11th April 2022 the applicant through his counsel filed this revision on the ground that the plea of guilty was irregular and not unequivocal and that the conviction was unsafe. That the accused never admitted to driving carelessly or causing the accident.
11. When the matter came for hearing Mr. Raydon Mwangi appeared for the applicant, and Mr. Kihara for the state. Mr. Kihara for state having perused the proceedings conceded and submitted that the court could refer the matter for retrial.
12. The application for revision is brought under Sections 362 – 363 of the *Criminal Procedure Code*. The issue for determination is whether the plea taken by the applicant herein was unequivocal.
13. Section 362 provides the Power of 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.”

14. In *John Muendo Musau vs Republic* [2013] eKLR the Court of Appeal stated;

“On this argument, we wish to state that we have outlined the procedure followed before the trial court at the time of taking the plea. The legal principles to be applied in plea taking in all criminal cases were well enunciated in the locus classicus case of *Adan vs Republic* [1973] EA 445}} where the Court held:-

- (i) The charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands.
- (ii) The accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded.
- (iii) The prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts.
- (v) If the accused does not agree with the facts or raises any question of his guilt his reply must be recorded and change of plea entered.”



15. The *Criminal Procedure Code Bench Book* at page 39 states;
“The aim is to ensure that the plea of guilty is unequivocal and that the plea recorded cannot be interpreted in any way other than an admission of guilt. Where an accused person is unrepresented the duty of the court to ensure that a plea of guilty is unequivocal is heightened as emphasized.”
16. In this case the accused was unrepresented. One would expect that the moment he stated he was pleading guilty against his will, the court would have queried him to find out why, and proceed to enter the proper plea, when he blamed the motor cyclist from the accident, that negated his plea, the court ought to have taken note.
17. The moment the accused person in his mitigation stated that he was not to blame for the accident, and even when he stated that he was pleading guilty against his will to save the court’s time, the learned trial magistrate ought to have noted immediately that this plea was not unequivocal, and entered a plea of not guilty.
18. The powers of the court upon revision are similar to those of the court on appeal as set out under Section 354 of the *Criminal Procedure Code*. It states at Section 354 (3) that in an appeal from a conviction the court may “(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be tried by a court of competent jurisdiction.”
19. Hence, having exercised the powers conferred to this court by Section 362 of the Criminal Procedure Code, as to the correctness, legality or propriety of the finding/sentence/regularity of the proceedings in the trial court, I am of the view that the proceedings were irregular, and the legality of the finding and sentence questionable due to the fact that the plea entered by the applicant herein was unequivocal.
20. In entering a plea of guilt and proceeding to convict and sentence the accused, the trial court went against the laid down procedure of taking plea, and acted on the unequivocal plea of the applicant.
21. In the circumstances the proceedings are set aside, the conviction and sentence is reversed, and the applicant is to be tried by a court of a competent jurisdiction other than Hon. W. K. Kitur, Resident Magistrate.
22. To ensure this, the accused person to appear before the Honourable Chief Magistrate within seven (7) days of this Ruling for plea taking.
23. The ODPP to liaise with the police station involved to effect the same.
24. Orders accordingly.

DATED AND SIGNED THIS 9TH DAY OF MAY, 2022. DELIVERED VIA EMAIL THIS 24TH DAY OF MAY 2022

MUMBUA T MATHEKA

JUDGE

Delivered via email this 24th Day of May 2022

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