



REPUBLIC OF KENYA



**KENYA LAW**  
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**Simiyu v Republic (Criminal Revision E056 of 2022)  
[2022] KEHC 12590 (KLR) (2 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12590 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CRIMINAL REVISION E056 OF 2022  
JN KAMAU, J  
AUGUST 2, 2022**

**BETWEEN**

**KEVIN SIMIYU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Originally Traffic No E304 OF 2022)*

**RULING**

1. The applicant was charged with the offence of causing death by dangerous driving contrary to section 46 of the *Traffic Act* cap 403 (Laws of Kenya). He was also charged with the offence of riding a motor cycle on a public road without insurance certificate contrary to section 103B (3) as read with section 103B (7) of the *Traffic Act* and the offence of riding a motor cycle on a public road without a driving licence contrary to section 103 (5) as read with section 103B (7) of the *Traffic Act*. He was arraigned in court on 23/3/2021 when he pleaded guilty to all the three (3) counts. At the time of sentencing, the learned trial magistrate indicated that he had learnt his lesson in respect of counts II and count III. The learned trial magistrate fined him Kshs 50,000/- or in default to serve eighteen (18) months imprisonment. The report by Munialo Godwin John probation/community service officer that was filed on 29/7/2022 did not recommend a non-custodial sentence on the ground that the family and local administration wanted him to complete his sentence in custody this early date of release by the prison as 17/3/2023. He had since served four (4) months fourteen (14) days. Section 28 (2) of the *Penal Code* provides that where the fine exceeds Kshs 15,000/- but does not exceed Kshs 50,000/-, the imprisonment in default of six (6) months. Taking into consideration the remission, the applicant was to complete his sentence on 27/7/2022 and not 17/3/2023 as the prison had indicated. Their computation was made on an unlawful and illegal sentence that had no basis in law that was imposed upon the applicant by the applicant herein. As the applicant has already completed his sentence, it



is hereby directed that he be released forthwith unless he be held for any other lawful cause. Orders accordingly.

**DATED AND DELIVERED AT BUSIA ON THIS 2<sup>ND</sup> DAY OF AUGUST, 2022.**

**J. KAMAU**

**JUDGE**

