



**Matende v Republic (Criminal Appeal E24 of 2022)
[2022] KEHC 13151 (KLR) (29 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13151 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL APPEAL E24 OF 2022
JR KARANJA, J
SEPTEMBER 29, 2022**

BETWEEN

HASSAN MATENDE APPLICANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The appellant was charged before the Chief Magistrate's court at Busia with one count of driving a laden motor vehicle on a road exceeding the maximum dimensions permitted for such a vehicle contrary to S 55 (2) as read with S 58 of the *Traffic Act*, Cap 403 Laws of Kenya.
2. The particulars were that on June 13, 2022 at about 1400 hours along Busia /Kisumu Road at the Busia Weighbride being the driver of m/v Reg No UBU 691L Trailer UAF 9769 make Nissan, the appellant drove the said m/vehicle with a length projection of 18.7 metres of the vehicle body against the permissible 17.4 metres hence exceeding 1.3 metres.
3. The appellant was expected to appear before the Chief Magistrate's Court at Busia on June 14, 2022 for the charge to be read to him and for him to take the plea. The record of the trial court clearly indicates that the appellant did not appear in court either personally or through counsel yet the trial court purported to enter a plea of guilty, I treat the facts as per particulars and proceeded to convict the accused/appellant and eventually pass a sentence of kshs 400,000/= fine and in default, two years imprisonment.
4. Clearly, the record shows that the accused did not appear in court for plea and it was therefore not possible for him to answer to the charge and plead guilty unless he was a "ghost".
5. It would follow that the proceedings or purported proceedings of June 14,2022 before the trial court were irregular defective and a sham.



6. For this reason alone, grounds one and two of the appeals are meritable and are hereby sustained with the resultant effect that ground three must also and is hereby sustained for the mere fact that the appellant's conviction was improper and unlawful.
7. A person cannot be sentenced for an offence for which he did not take plea and if he did, he was not properly convicted.
8. It is no wonder that the respondent conceded the appeal without much ado.
9. In sum, the appeal is allowed to the extent that the appellant's conviction be and is hereby quashed and the sentence imposed upon him set aside with orders that the fine paid by the appellant be released to him forthwith and the matter be retried before a different magistrate of competent jurisdiction.
Ordered accordingly.

J R KARANJAH

J U D G E

Dated, Delivered & Signed this 29TH day of SEPTEMBER 2022

