



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL DIVISION

CRIMINAL REVISION NO. E015 OF 2021

AMBROSE KARITHI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. Ambrose Karithu was a witness in Mombasa Chief Magistrate Court Traffic

Case No. E545 OF 2021 in which Jackson Mugambi was charged with the offence of causing death by dangerous driving contrary to Section 46 of the Traffic Act Cap. 403 Laws of Kenya.

2. The particulars were that Jackson Mugambi on the 14th day of December 2020 at about 1800hrs along Makupa causeway Kibarani in Mombasa County of the Coast Region being the driver of motor vehicle Registration KTWA 813 Y make Bajaj Tuktuk drove the said motor vehicle along the said road in a manner which was dangerous to the public having regard to all the circumstances of the case including the nature, condition and use of the road and the mode of traffic which was actually at the time or which might reasonably be expected on the road in that you knocked down one female juvenile pedestrian namely MR aged 8 years who suffered serious injuries and died while undergoing treatment.

3. Jackson Mugambi was also charged with offence of driving a motor vehicle on a public road without a driving licence contrary to Section 30(1) of the Traffic Act in Count II and the offence of failing to stop and report after being involved in an accident contrary to Section 73(1) as read with Section 75 of the Traffic Act Cap 403 Laws of Kenya.

4. Jackson Mugambi pleaded not guilty to the charges and was granted bond of Kshs.200,000/= with one surety of similar amount and on 30th March 2021 he was granted an alternative cashbail of Kshs.100,000/=.

5. The applicant herein was a witness in the said traffic case in which he was also the registered owner of the tuktuk that was involved in the accident herein. He was scheduled to testify on 24th May 2021 but the trial Magistrate detained him for reason as shown in record as refusal to testify after recording a statement with police.

6. On 28/5/2021 when matter came up for mention applicant was represented by Mr. Kimani Advocate who indicated that the applicant had read his statement to the police and agrees with content and was now ready to testify and give clarifications and after recording a supplementary statement Mr. Kimani apologized on behalf of the applicant and submitted that he was ready to testify at the next hearing date. The court was satisfied with explanation and ordered that applicant records a further statement as condition for his release.

7. By a letter dated 25/05/2021 the applicants counsel Stephen Macharia Kimani wrote to the court through the Deputy Registrar seeking that the court revises the order detaining the applicant for it was irregular, oppressive and probably illegal on ground that applicant could contravene the principle of self-incrimination. It was argued that applicant was denied legal representation before being incarcerated and the court didn't satisfy itself that incarceration was the only procedure to prevent obstruction of injustice or uphold the integrity of trial.

8. The applicant sought revision pursuant to Article 165 (6) of constitution and section 362 of the Criminal Procedure Code. The application was scheduled for hearing on 2/6/2021 in event applicant was not released by 28/05/2021. On 2/6/2021 the applicant and his counsel didn't attend and further mention scheduled for 29/06/2021 whereupon Deputy Registrar was instructed to avail lower court file for consideration.

9. On 29/06/2021 the applicant and his counsel didn't attend and matter was scheduled for ruling based on perusal of lower court file.

Perusal of the trial courts file reveals that application is overtaken by events as applicant was released on 28/05/2021 on condition he records a further statement and after his counsel had apologized to the court over occurrences of 24/05/2021.

10. I have not found any error, illegality or impropriety in the order made by the trial Magistrate on 24/05/2021 when applicant wanted to recant a statement that he had recorded with the police for no justifiable reason.

11. The application for revision is therefore dismissed.

Dated, signed and delivered in Open Court /online through MS TEAMS, this 29th day of July, 2021

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:-

Ogwel – Court assistant

Mr. Stephen Macharia Kimani Advocate for Applicant

Ms. Karanja for Respondent

Applicant– No appearance

Hon. Lady Justice A. Ong'injo

Judge