



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MILIMANI**

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO.357 OF 2019**

**WILSON NDIRANGU NYAMBURA.....APPLICANT**

**VERSES**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant was charged with the offence of **driving under the influence of alcohol** contrary to **Section 44(1)** of the **Traffic Act**. The particulars of the offence were that on 9<sup>th</sup> August 2019 at about 1.00 p.m. along Kangundo Road within Nairobi County, the Appellant, being the driver of motor vehicle registration No.KCB 558K make Isuzu bus, did drive the said motor vehicle without proper control and in a manner that was dangerous to other road users due to influence of alcohol which was 0.709mg/l instead of the recommended 0.000mg/l for a public service vehicle driver. When he was arraigned before the trial magistrate's court, he pleaded guilty to the charge. He was convicted on his own plea of guilty and sentenced to pay a fine of Kshs.40,000/- or in default serve one (1) year imprisonment. The Applicant failed to raise the fine. He is serving the default sentence.

The Applicant has applied to this court for a reconsideration of the default custodial sentence that he is serving. He told the court that since his conviction on 13<sup>th</sup> August 2019, he has been in prison. During this period, his young family has suffered due to the fact that they were deprived of a sole breadwinner. He pleaded with the court to consider the period that he has been in prison and find that he has been sufficiently been punished. He was remorseful and promised not to repeat the offence. He had learnt his lesson. He urged the court to exercise leniency on him. Ms. Chege for the State noted that the Applicant's plea of guilt was equivocal. After the Applicant had pled guilty to the charge, the facts were not read to him by the prosecution. In that regard, she was of view that although the Applicant committed the offence, the process upon which the plea of guilty was recorded was flawed. She therefore urged the court to exercise its discretion accordingly. She submitted that in view of the fact that the Applicant had served a substantial part of his sentence, she was not asking the court to retry the Applicant.

This court has perused the proceedings of the trial court. It is indeed true that the plea of guilty that was recorded by the trial court was not in accordance with the directions given by the Court of Appeal in the case of **Adan -vs- Republic [1973] EA 445**. After the Applicant had pled guilty to the charge, the facts supporting the charge were not read to him so that he could confirm the same. That being the case, the plea of guilty that was recorded by the trial court was equivocal. In the circumstances, the conviction of the Applicant is hereby quashed and the sentence set aside. If the Applicant had not served five (5) months in prison prior to the hearing of this application, this court would have ordered the Applicant to be retried.

In the premises therefore, the order that commends itself to the court is that the Applicant be discharged forthwith and released from prison unless otherwise lawfully held. It is so ordered.

**DATED AT NAIROBI THIS 29<sup>TH</sup> DAY OF JANUARY 2020**

**L. KIMARU**

**JUDGE**