

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL REVISION NO. 49 OF 2020

(CORAM: R. E. ABURILI - J.)

TIMOTHY ODHIAMBO OPONDO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for Revision of sentence vide Traffic Case No. 17 of 2020 in the Senior Resident Magistrate's Court, Ukwala dated 11.3.2020 before Hon. C.I. Agutu, SRM)

RULING

1. The prisoner **Timothy Odhiambo Opondo** was sentenced to fine of Kshs. 5,000/= in default to serve one month imprisonment. This was following a purported own plea of guilty for the offence of permitting an unlicensed rider contrary to **Section 30(2) as read with Section 30(b) of the Traffic Act**.
2. The trial court record shows that the offender was sentenced on 11/3/2020 after he mitigated and prayed for forgiveness, as he is a breadwinner.
3. The prisoner was a first offender and according to the prison's assessment report dated 29/3/2020 on his general conduct, discipline and character, he is said to be ignorant of Traffic Laws, and is disciplined and of good character for the short period he has been in prison. He is due to complete prison sentence on 10/4/2020.
4. I have considered the above and the proceedings taken in the SRM's court at Ukwala by Hon. C.I. Agutu, SRM, on 11/3/2020. I observe that there was no conviction entered against the offender. After the plea of guilty was entered, the court asked for mitigation and sentence was imposed. Furthermore, no facts were ever read out to the offender for him to admit or reject.
5. In my humble view, the plea was fatally, equivocal. I would have ordered for a retrial but the sentence is almost completed. I find the proceedings leading to sentence imposed on the prisoner herein were irregular. I invoke **Sections 362, 364 of the Criminal Procedure Code and Article 165(6) and (7) of the Constitution** and quash the said proceedings and set aside the sentence imposed on the offender **Timothy Odhiambo Opondo** and order that unless otherwise lawfully held, **Timothy Odhiambo Opondo** is hereby released from prison.
6. Orders accordingly.

Dated, signed and Delivered at Siaya this 30th day of March, 2020.

R.E. ABURILI

JUDGE