REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.864 OF 2018

HEZRON JAPHETH AMIMO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Hezron Japheth Omimo was charged with several counts under the **Traffic Act** in **Nairobi Chief Magistrate's Court Traffic Case No.13804 of 2018 Republic –vs- Hezron Japheth Amimo**. In Count 1, he was charged with **failing to conform to an indication given by a traffic sign** contrary to **Section 52(1)(**b) as read with **Section 52(**2) of the **Traffic Act**. In Count 2, he was charged with **causing obstruction** contrary to **Section 54(1)** of the **Traffic Act** as read with **Section 53(4)(a**) of the **Traffic Amendment Act 2012**. On the second page of the charge sheet, there is another charge that appears as Count 1. In that count, the Applicant was charged with **driving a motor vehicle on a public road without a driving licence** contrary to **Section 30(1)** of the **Traffic Act** as read with **Section 41** of the **Act**. The alternative charge was that he failed to carry a driving licence contrary to **Section 36(1)** of the **Traffic Act** as read with **Section 30** of the said **Act.** The charge sheet contains five (5) other counts which do not have particulars. When the Applicant was arraigned before the trial magistrate's court, he pleaded not guilty to the four counts. The trial has commenced before the magistrate's court. The Applicant was put on his defence. He has adduced evidence in his defence. The case was reserved for the parties to present to the court their written closing submission.

It was at that point that the Applicant lodged the present application seeking, *inter alia*, to challenge the entire proceedings and the charge sheet, in particular, on the grounds that it was defective. The Applicant contends that it was impossible for him to discern the charges that were brought against him. He pointed out the gaps in the charge sheet, which in his view, rendered it impossible for him to defend the charges brought against him. It was on that ground that the Applicant was seeking orders of this court to revise the decision of the trial court.

During the hearing of the application, Mr. Maina for the Applicant amplified this application. He specifically stated that the charge sheet as presented was incurably defective in that the Applicant was charged with a total of nine (9) counts, most of which did not have particulars. This prevented the Applicant from presenting his defence in that he did not know the charges that he was facing. He therefore urged the court to allow the application and quash the charges that were brought against the Applicant.

Ms. Atina for the State opposed the application. She submitted that the Applicant was aware of the charges that he was facing; he pleaded to the charges; he ably defended himself during trial and had even adduced evidence in his defence. She submitted that there was no basis for the claim by the Applicant that the charges brought against him were duplex or that they were not clear enough as to prevent the Applicant from defending himself. She urged the court to take note of that the trial had been concluded. The only issue that was remaining was for the parties to present to court their final submission before the trial court rendered its decision. She urged the court to dismiss the application.

This court has carefully considered the rival submission made by the parties to this application. The Applicant claims that the charges brought against him were duplex or were vague to the extent that he was prevented from mounting a credible defence. In particular, the Applicant states that the charge sheet did not contain sufficient details that would have enabled him to know the charges that he was facing so that he could adequately prepare for his defence. This court has perused the charge sheet. It was clear to this court that the prosecution has taken standardization to absurd levels. It appeared that the traffic police have developed a standard charge sheet with common traffic offences which they then fill with particulars to suit the particular offender. In doing so, the standardized charge sheet has not been separated so that the particular charges facing an offender can be presented to court without other charges which do not relate or affect him being presented to court. This court is of the view that this is a practice that ought to be discouraged as it creates confusion to those charged in regard to what charges they are supposed to plead to. It may also hamper them from preparing an appropriate defence. This was manifested in the charge sheet that is the subject of this application.

However, having read the proceedings of the trial court, it was clear to this court that the Applicant understood the charges that he was facing. He has pleaded to those charges. He has defended himself. The trial is at an advanced stage. This application has been brought at a later stage of proceedings. This court cannot intervene to nullify the proceedings. The Applicant is at liberty to present the arguments that he has presented before this court in his final submission before the trial court. Should the decision of the trial court go against him, he can appeal to this court.

In the circumstances therefore, this court agrees with the prosecution that the issues that the Applicant has raised in this particular application ought to have been raised earlier in the proceedings. At the stage the proceedings have reached, it is only fair for this court to allow the trial court to conclude the trial. The application is therefore dismissed. The trial court's file is ordered returned to the Chief Magistrate's Court for the conclusion of the trial. It is so ordered.

DATED AT NAIROBI THIS 26TH DAY OF FEBRUARY 2019

L. KIMARU

JUDGE