



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.877 OF 2018

JOSEPHAT NDERITU MAINA .....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Josephat Nderitu Maina was charged in **Nairobi Chief Magistrate’s Court Traffic Case No.16538 of 2018 Republic –vs- Josephat Nderitu Maina** with the offence of **driving a motor vehicle fitted with spotlights** contrary to **Section 25(5)(B)** of the **Traffic Rules**. The particulars of the offence were that on 26<sup>th</sup> October 2018 at 8.50 a.m., along Lusaka/Enterprise Road within Nairobi Country, being a passenger in a motor vehicle registration No.KAV 561P drove the said motor vehicle while fitted with spotlights likely to cause annoyance or impede vision of other road users. When the Applicant was arraigned before the trial magistrate’s court, he pleaded guilty to the charge. He was ordered to pay a fine of Kshs.5,000/-. He paid the fine. He was however aggrieved by the decision. He filed an application before this court under **Section 362** of the **Criminal Procedure Code** to have the decision revised.

In the application, the Applicant contends that he was convicted on the basis of a non-existence offence. In particular, he stated that there was no offence known under the **Traffic Act** or the **Traffic Rules** that outlawed motor vehicles fitted with spotlights. He stated that **Section 25(5)(B)** of the **Traffic Rules** did not prohibit the alleged offence. In the circumstances therefore, the Applicant urged the court to revise the decision of the trial court and quash his conviction and order that he be refunded the fine that he had paid.

During the hearing of the application, Mr. Njenga for the Applicant reiterated the contents of the application. He urged the court to allow the application. Mr. Momanyi for the State conceded to the application. He noted that the Applicant should have been charged under **Rule 23** of the **Traffic Rules** and not **Rule 25(5)(B)** of the **Traffic Rules**. This court considered the facts of this case. **Rule 25** of the **Traffic Rules** deals with reflectors and warning signs in general. In particular **Rule 25(5)** of the **Traffic Rules** provides as hereunder:

*“Where under this rule a warning sign is required is (to) be mounted on a metal plate, such plate –*

*(a) ...*

*(b) Shall be securely mounted on the body, chassis or frame of the vehicle at right angles to the longitudinal axes of the vehicle so that the warning sign is facing directly forwards or rearwards, as the case may be.”*

**Rule 23** of the **Traffic Rules** deals generally with lights on motor vehicles. It is under this Rule that the Applicant ought to have been charged. Further, the particulars of the charge indicated that the Applicant as **“a passenger”** drove the motor vehicle in the circumstances that created the offence. It is evident that the particulars in support of the charge sheet were incurably defective. He could not have driven the said motor vehicle as a passenger. The Applicant was charged with a non-existent offence on the basis of incurably defective particulars.

In the premises therefore, this court finds merit with Applicant’s application. The Applicant’s conviction by the trial court is brought to this court and is hereby revised. The Applicant’s conviction is quashed. He is acquitted of the charge. The fine imposed on him is set aside. He is ordered refunded the fine that he had paid. It is so ordered.

DATED AT NAIROBI THIS 26<sup>TH</sup> DAY OF FEBRUARY 2019

L. KIMARU

JUDGE