



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL REVISION NO. 59 OF 2019

JOSEPH THURANIRA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON REVISION

1. The Applicant, being aggrieved by the decision of Hon P. M. Wechuli (R.M.) dated 17th January 2019 in **the Tigania PMC Traffic Case No. 28 of 2019 Republic vs. Joseph Thurania** has approached this court vide a letter dated 7th February, 2019 praying for the reversal of the judgment of the trial court.
2. The applicant had been charged with the offence of failing to maintain parts and equipment's contrary to **section 55(1) as read with section 58(1) of the traffic Act cap 403 Laws of Kenya ("the Act")**.
3. It had been alleged that on 16th January, 2019 at 1440 hrs at Nchiru Centre, along Meru - Maua Highway, within Meru County, being a driver of Motor vehicle Reg. No. KCP859L, make Toyota Probox white in colour, the applicant drove the said vehicle on the said road without the left side mirror in contravention of the said Act.
4. After the charge was read out to the applicant and the elements of the offence explained to him, the appellant pleaded guilty to the charge and was convicted on his own plea of guilt.
5. In mitigation, the appellant stated that he was going to fix the side mirror. The prosecution stated that there were no previous records against the applicant. After considering the mitigation, the trial court imposed a fine of Kshs.10,000/- in default 3 months imprisonment.
6. The applicant challenges the trial court's decision on the following grounds:-
 - a) that the fine is illegal and contrary to the **Traffic Act Cap 403 sections 55 and 58, and Rule 29** under the first schedule of minor offences;
 - b) that the fine is extremely high considering the applicant was a first offender;
 - c) that the trial court erred in failing to call and consider that the registration of motor vehicle KCP 859L was wrong and did not belong to the applicant since its registration number was KCB 859L;
 - d) that the sentence is against the judiciary policy guidelines on sentence;
 - e) the trial court failed to consider the applicant mitigation when sentencing.
7. The jurisdiction of this court for revision is invoked under **section 362 of the Criminal Procedure Code**. The same extends only to this court calling for and examining the record of any subordinate court for the purposes of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceeding of such court.
8. On the allegation that the trial court failed to consider that the registration No. KCP 859L was wrong and that the applicant's vehicle was registration number KCB 859L, the answer is simple. The fault in the registration number did not make the charge sheet defective. The elements of the charge were clearly read out to the applicant and he stated that they were true. He admitted to the facts of the charge. He did produce to the trial court the registration documents different from those appearing in the charge sheet. He cannot now turn around and state

that they were incorrect.

9. The trial court cannot therefore be faulted as sought by the applicant. There was no obligation upon the trial court to call for, consider and verify the registration number of the subject vehicle.

10. The other grounds were anchored on the judgment and the sentence. **Section 55 of the Act** provides: -

“No vehicle shall be used on a road unless such vehicle and all parts and equipment thereof, including lights and tyres, comply with the requirements of this Act, and such parts and equipment shall at all times be maintained in such a condition that the driving of the vehicle is not likely to be a danger to other users of the road or to persons travelling on the vehicle.”

11. **Section 58 of the Act** provides: -

“Any person who drives or uses on a road a vehicle in contravention of the provisions of section 55, 56 or 57 or in accordance with the East African Community Vehicle Load Control Act, 2013, shall be guilty of an offence and liable to a fine not exceeding four hundred thousand or to imprisonment for a term not exceeding two years or to both:

Provided that rules under this Act may provide that a person who is guilty of an offence under section 55, 56 or 57 or in accordance with the East African Community Vehicle Load Control Act, 2013, shall be liable to pay a fine according to a prescribed scale, and different scales may be prescribed for first offenders, and for second or subsequent offenders, within a prescribed period, but so that no person shall thereby be liable to pay a fine greater than the maximum provided by this subsection; and for the avoidance of doubt it is declared that liability of a person to pay a fine on a prescribed scale shall not affect that person’s liability to imprisonment under this subsection as an alternative to, in addition to, or in default of, the payment of a fine”.

12. The other relevant provision is **Rule 29 of the Traffic Rules** which provides:-

“Every motor vehicle shall be equipped with a reflecting mirror, so constructed and fitted as to enable the driver to be or become aware of the presence in the rear of any other vehicle”.

13. From the foregoing, it is clear that both the **Traffic Act** and the **Traffic Rules** imposes fines for various offences. There is however, a caveat under the **section 3 of the Rules**. It provides:-

“Where any act or omission is an offence under the Act and these Rules, nothing in these Rules shall be deemed to affect the liability of any person to be prosecuted under the Act:

Provided that no person shall be prosecuted twice for the same act or omission”.

14. **Sections 117 and 118 of the Act** provides for minor offences and general penalty for offences not provided for under the Act. **Section 118** ascribes a penalty of Kenya Shillings One Hundred thousand shillings (**Kshs. 100,000/**) for a first time offender. I have also considered the provisions of the **Traffic (Minor Offences) Rules, 2016**. Those rules do not apply.

15. The record shows that the applicant was a first time offender. He was given an opportunity to mitigate which mitigation was duly considered by the trial court. Taking into consideration that **section 56 of the Act** imposes a maximum fine of Kenya shillings four hundred thousand or to imprisonment for a term not exceeding two years or to both, I do find that the trial court did not in any way error in imposing a fine of kshs. 10,000/= or in default 3 months imprisonment.

16. The upshot is that the application lacks merit and the same is hereby dismissed.

It is hereby ordered.

DATED and DELIVERED at Meru this 28th day of June, 2019.

A. MABEYA

JUDGE