



REPUBLIC OF KENYA

AT THE HIGH COURT IN NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPL. NO. 191 OF 2019

MWANGI IRUNGU MURIGI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant vide Chamber Summons dated 1st July, 2019 seeks review of sentence. He had been charged with six (6) counts of traffic related offences. They are duplicated below as follows:

I. Careless driving contrary to section 49(1) of the Traffic Act; the particulars were that on the 21st of December, 2018 at about 1530hrs along Thika Road at Allsops area within Nairobi County being a driver of a motor vehicle registration number KCA 478R Nissan Vannet drove the said motor vehicle on the said road without due care and attention failing to keep his side and hit a motor vehicle registration number GKA 807B belonging to DTO Kasarani therein occasioning damages on the front right side.

II. Failing to wear public service vehicle uniform contrary to section 103A (1) (2) of the Traffic Amendment Act of 2012 Cap 403 Laws of Kenya punishable by section 103A (7) of the said Act; the particulars were that on the 21st December, 2018 at about 1530hrs along Thika Road within Nairobi County being a driver of a motor vehicle registration number KCA 478R make Nissan Vannet within Nairobi County failed to wear the public service vehicle uniform.

III. Failing to wear Public Service Badge contrary to Section 103A (1)(2) of the Traffic Amendment Act 2012 Cap 403 Laws of Kenya punishable under section 103A (7) of the Act. the particulars were that on the 21st December, 2018 at about 1530hrs along Thika Road within Nairobi County being a driver of a motor vehicle registration number KCA 478R make Nissan Vannet within Nairobi County failed to wear public service badge.

IV. Failing to comply with the condition of the National Transport and Safety Authority Act 2012 contrary to section 30(1) punishable by section 30(7) of the said Act. The particulars were that on the 21st December 2018 at about 1530hrs along Thika Road within Nairobi County being a driver of a motor vehicle registration number KCA 478R make Nissan Vannet within Nairobi County did operate the said public service vehicle along Thika Road instead of the authorized Muthurwa, Ruai, Kangundo, Machakos and Back.

V. Picking and setting down passengers at a place not authorized as a bus stop/terminal contrary to rule 64(D) as read with rule 69 of the Traffic Amendment Rules. The particulars were that on the 21st December, 2018 at about 1530hrs along Thika Road within Nairobi County being a driver of a motor vehicle registration number KCA 478R make Nissan Vannet within Nairobi County did pick/set passengers at a place not authorized to be a bus stop/terminal.

VI. Causing obstruction contrary to Section 53(1) of the Traffic Act punishable by section 53(d)(a) of the traffic Amendment Act no.2 of 2012. The particulars were that on the 21st December, 2018 at about 1530hrs along Thika Road within Nairobi County being a driver of a motor vehicle registration number KCA 478R make Nissan Vannet within Nairobi County did allow the said motor vehicle to remain on the said road likely to obstruct or cause inconvenience to other road users.

2. He pleaded guilty to the six (6) charges and was fined in counts I and III Kshs. 50 000/- in default serve ten (10) months and Kshs. 10 000/- in default serve two (2) months respectively. In counts II, IV, V and VI he was sentenced to a fine Kshs. 10 000/- in default serve two (2) months imprisonment on each charge.

3. The Applicant submitted that he was remorseful for the offence committed and that he was a first offender. He also urged the court to consider that he had a young family with two (2) children. He also submitted that he was the sole breadwinner of the family. He urged the

court to hand him a non-custodial sentence. The Respondent through its counsel Mr. Momanyi did not oppose the application. He urged the court to exercise its discretion.

4. This is a case in which the Applicant pleaded guilty which ought to have mitigated for a lenient sentence. He has since the conviction been in custody for a period of nine months, an indicator that he cannot afford the fines. He is remorseful. The offences were also committed within the same transaction. They were minor in nature save for count I. Even then there were no injuries occasioned during the accident. Against this backdrop, I find that the application is meritorious.

5. I set aside the remainder of the sentence and find that the Applicant has served sufficient sentence. I order that he be forthwith set free unless otherwise lawfully held.

Dated and delivered this 26th day of September, 2019.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Applicant in person

2. Mr. Momanyi for the Respondent.