



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL APPEAL NO. 127 OF 2014

SIGSMOND PASTORY RUWA APELLANT

VERSUS

REPUBLIC RESPONDENT

(An Appeal from the Judgment of the Principal Magistrate Honourable B. Mosiria in Kapsabet Traffic Case No. 635 of 2014, dated 15th July, 2014)

JUDGMENT

1. The appellant *Sigsmund Pastory Ruwa* was charged with the offence of careless driving contrary to *Section 49(1)* of the *Traffic Act Cap 403 Laws of Kenya*.
2. The particulars of the offence alleged that on 18th March, 2014 at about 3.30 p.m along Kapsabet – Chava road in Nandi County, being the driver of motor vehicle registration number KBQ 631 C make Scania, the appellant drove the said motor vehicle in a manner that was dangerous to the public and other road users thereby causing an accident in which twenty people were injured.
3. The appellant was convicted on his own plea of guilty. He was sentenced to pay a fine of Kshs. 400,000 in default to serve twenty four months imprisonment.
4. The appellant was aggrieved by his conviction and sentence. Through his advocates *Ms Ipapu P. Jackah & Company Advocates*, he filed the instant appeal raising two grounds as follows;
 - i. That the plea of guilty entered against him was unequivocal.
 - ii. That his constitutional rights were breached as the language of the proceedings and charge as read out to him cannot be known with certainty.
5. At the hearing, the appellant was represented by learned counsel *Ms. Ipapu* while learned prosecuting counsel *Ms. Mutheu* appeared for the state.

In his submissions, *Mr. Ipapu* contended that the appellant's plea was unequivocal; that he did not plead guilty but the trial court erroneously called upon him to plead to the facts of the case. Counsel also submitted that the sentence imposed on the appellant was unlawful and that he should be refunded the Kshs. 400,000 he paid as fine. He urged the court to allow the appeal and not to order a retrial.

6. The state contested the appeal. In opposing the appeal, *Ms. Mutheu* urged the court to find that the plea was unequivocal; that the recording by the trial magistrate that a plea of not guilty had been entered after

the appellant answered to the charges was a typographical error given that thereafter, the appellant pleaded to the facts of the case and proceeded to offer a plea in mitigation. It was also her view that the sentence was lawful as many people had been injured in the accident.

7. I have read and considered the grounds of appeal, the submissions made on behalf of the appellant and the state and the record of the lower court. It is settled law that for a plea to be unequivocal, it must pass the test enunciated in *Section 207* of the *Criminal Procedure Code* which set out the procedure a plea court must follow in recording a plea of guilty from an accused person. The procedure has been reiterated in several authorities including the case of *Adan V Republic (1973) EA 445* which was adopted by our Court of Appeal in *Kariuki V Republic (1984) KLR 809*.

8. The procedure a plea court must follow in recording a plea of guilty is as follows;

- i. The charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language that he understands;
- ii. The accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded.
- iii. The prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts;
- vi. If the accused does not agree with the facts or raises any questions of his guilt, his reply must be recorded and change of plea entered.
- v. If there is no change of plea, a conviction should be recorded and a statement of the facts relevant to sentence together with the accused's reply should be recorded.

9. I have read both the typed and handwritten proceedings recorded by the trial court. The handwritten proceedings show clearly that after the charge was read to the appellant in a language he understood, he is recorded as having responded; "It is true". The trial court then entered a plea of guilty abbreviated as P.O.G.E. I therefore agree with *Ms. Mutheu* that the reflection in the typed proceedings that a plea of not guilty had been entered was a typographical error.

10. The record shows that the learned trial magistrate followed all the steps of recording an unequivocal plea as required by *Section 207* of the *CPC*. After the appellant pleaded guilty to the offence, the facts supporting the charge were read out to him and he admitted them as true before he was convicted of the offence. I am thus unable to agree with *Mr. Ipapu's* submission that the plea was equivocal. It is my finding that the plea of guilty in this case was unequivocal and that the appellant was properly convicted.

11. On the appeal against sentence, the law at *Section 49* of the *Traffic Act* prescribes a penalty of a maximum fine of Kshs. 5,000 for a first offender and for a subsequent offender to a fine of KShs. 5,000 or to imprisonment for a term not exceeding three months.

In this case, the record clearly shows that the appellant was to be treated as a first offender. The appellant was charged and convicted of only one count of careless driving. The fact that several people had been injured in the accident was an irrelevant consideration as far as sentencing was concerned. The maximum penalty prescribed for the offence for a first offender was a fine of Kshs. 5,000 and this is the sentence that the trial court ought to have imposed on the appellant. The sentence of a fine of Kshs. 400,000 was thus plainly illegal and cannot be allowed to stand. Under the powers bestowed on this court by *Section 354* of the *Criminal Procedure Code*, I hereby set aside the said sentence and in its place substitute it with a sentence of a fine of Kshs.5.000. There is no default sentence as the appellant had already paid the fine imposed by the trial court.

12. Since the appellant had already paid the illegal fine, I order that the fine paid be refunded to the appellant less Kshs.5,000 being the fine that has been substituted by this court.

It is so ordered.

C.W GITHUA

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 23rd day of March, 2017

In the presence of:

Ms. Oduor for the state

Mr. Lobolia court clerk

In the absence of both the Appellant and his advocate though duly notified.