



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL REVISION NO.48 OF 2017

(From original conviction and sentence in Traffic Case No. 28 of 2015 of the Chief Magistrate's Court at Kisumu passed by – L.Yalwala - PM).

JULIUS ONYANGO AYIEKO.....APPLICANT

V E R S U S

REPUBLIC.....RESPONDENT

RULING

This revision was brought by way of applicant's letter dated 17.8.17 in which he seeks the following order:-

THAT The Honourable court do revise the sentence of 2 years imprisonment and substitute the same with a non-custodial sentence

The brief background of this matter is that the applicant was charged and convicted of 2 counts of causing death by dangerous driving contrary to section 46 of the Traffic Act.

The powers of the High court in revision are contained in Section 362 through to 366 of the Criminal Procedure Code (cap.75). Section 362 specifically provides as follows:-

“362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose 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 proceedings of any such subordinate court”.

What the High Court can do under its revision jurisdiction is stated under section 364 of the Criminal Procedure Code Cap 75, which states as follows:-

“364.(1) in the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High court may -

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 354, 357 and 358, and may enhance sentence;.

(b) in the case of any other order than an order of acquittal, alter or reverse the order.

Section 354 (3) (a) (ii) provides that the High Court has power to

(iii) With or without a reduction or increase and with or without altering the finding, alter the nature of the sentence;

I have perused the record of the Lower court for the purpose of satisfying myself as to the legality, correctness or propriety of the same. I have not found any irregularities in the proceedings. The record shows that the applicant is a first offender. These are mitigating circumstances that warranted a more lenient penalty than would have been ordinarily imposed in their absence.

In the end, the sentence imposed by the trial court is revised and in its place the applicant is fined Kshs. 100,000/- in each count and in default, he shall serve 2 years imprisonment.

DATED AND DELIVERED THIS 21st DAY OF September, 2017

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

Appellant - In person

For the State - Ms Wafula