



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CRIMINAL DIVISION**

**REVISION NO. 196 OF 2017**

**BETWEEN**

**KENNETH MURUNGA A.....APPLICANT**

**AND**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

1. I have seen and carefully read the inmates letter dated 20.11.2017 in which the inmate prays for revision of the sentence imposed upon him by the learned trial magistrate on 06.11.2017. The inmate was charged with the offence of driving under the influence of drink contrary to section 44(1) of the Traffic Act, Cap 403 of the Laws of Kenya. It was alleged he committed the offence on 06.11.2017 at 0331hours within Mama Watoto area within Kakamega town.

2. When he appeared for plea before the trial court, he pleaded guilty to the charge and thereafter he admitted the facts where upon he was convicted on his on plea and fined kshs.50,000/= (fifty Thousand) in default imprisonment for 6 months. He was said to be a first offender as the State did not have his previous criminal records. This is the sentence the inmate is asking the court to revise downwards to a non-custodial sentence or any other sentence that this court may find appropriate to impose.

3. The reasons why the inmate is asking the court to revise the sentence are two fold;-

a) that he is unable to raise the fine as he is from poor family.

b) that he is sickly.

Though the inmate does not say so, this application is made under the provisions of Section 362 – 367 of the Criminal Procedure Code, Cap 75 of the Laws of Kenya

4. Regarding the fine, I note that the offence carries a maximum fine of Kenya Shillings one hundred thousand in default imprisonment of twenty months. In my considered view, the sentence meted out by the trial court was reasonable. As to the allegation that the inmate is sickly, the record of the learned trial court does not know how that the inmate raised the issue of his sickness when he was given a chance to mitigate. He only said that he was trying to reach home as he was drunk. Secondly the inmate has not annexed any documents to his letter in support of his claim that he is sickly. In any event, that reason alone would not form a basis for revision of the sentence. Further the prisons have medical facilities at which inmates can be treated in case they are sick. In cases where sickness may be more serious than what the prison medical facilities can manage, orders can be granted by the court for treatment at other government medical facilities outside the prison

5. I would also like to state here that the fact that the inmate may be coming from a poor family does not give him a licence to drink himself silly to the point of endangering not only his life, but the lives of other road users. The inmate is therefore a danger to others if he is not given adequate time to learn his lesson

from a longer prison sentence. The inmate also alleges that his parents depend on him for their upkeep. From the record, the inmate never indicated, during mitigation, that he was his parents' bread winner. I also find that his level of drunkenness does not indicate that he is a responsible son.

6. From all the above, I find that the request for revision of sentence is not merited and the same is accordingly dismissed. The inmate shall continue to serve the sentence imposed upon him by the learned trial magistrate on 06.11.2017

It is so ordered.

Ruling given, dated and signed at Kakamega this 27<sup>th</sup> day of November, 2017

RUTH N SITATI

JUDGE