



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

CRIMINAL REVISION NO.57 OF 2017

(From original conviction and sentence in Traffic Case No. 382 of 2017 in Senior Resident Magistrate's Court at Winam passed by B.Kasavuli - SRM).

GEORGE ODHIAMBO OCHIENG.....APPLICANT

V E R S U S

REPUBLIC.....RESPONDENT

RULING

This revision was brought by way of applicant's application filed on 16.11.17 in which he seeks reduction of sentence on the following grounds:-

- i. THAT the applicant is 24 years*
- ii. That the sentence imposed on him is manifestly harsh and excessive*
- iii. That the trial magistrate did not consider his mitigation*

The brief background of this matter is that the applicant was charged and convicted of 3 counts. In the 1st count of careless riding, he was fined Kshs. 50,000/- in default 9 months imprisonment. In the 2nd count of riding an uninsured motor cycle, he was fined Kshs. 5,000/- in default 1 month imprisonment. In the 3rd count of riding without a license, he was fined Kshs. 1,000/- in default 1 month imprisonment.

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. This is a mitigating circumstance that warranted a more lenient penalty than would have been ordinarily imposed in its absence.

In the end, the sentence imposed by the trial court is revised only in respect of count 1 in the following terms:

i. In the 1st count, the applicant is fined Kshs. 20,000/- in default, he shall serve 3 months imprisonment

ii. Sentences in counts 2 and 3 remain as ordered by the trial court

DATED AND DELIVERED THIS. 22nd DAY OF November 2017

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

Appellant - N/A

For the State - N/A