



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 116 OF 2016

DANIEL WAFULA MUKARANA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Pursuant to **Section 362 of the Criminal Procedure Code**, the lower court proceedings have been forwarded to this court with a view to the court satisfying itself as to the correctness, legality or regularity of the sentence passed by the trial court.

The Applicant was charged in the Chief Magistrate's Court at **Nairobi Traffic Case No. 25150 of 2015** with three traffic offences.

In count I, he was charged with careless driving contrary to **Section 49(1) of the Traffic Act, Cap 403 Laws of Kenya**. The particulars of the offence were that on the 22nd day of October, 2015 at around 1100 hours along Koinange Investment Development Limited parking yard in Nairobi County, being the driver of motor vehicle registration No. KAJ 228R Mitsubishi Pajero, drove the said vehicle without due care and attention of other road users thereby losing control and hitting and damaging motor vehicles KBZ 833S Toyota Noah, KBA 726V Toyota Corolla, KAU 428H and KCB 600H Mercedes Benz, KAL 377T Toyota Corolla and KBZ 813F Honda, occasioning extensive damages.

In count II, he was charged with driving a motor vehicle in public road without a driving licence contrary to **Section 30(1) of the Traffic Act Cap 403, Laws of Kenya**. The particulars of the offence were that on the 22nd day of October, 2015 at about 11.00 am along Koinange Investment Development Limited parking yard in Nairobi County, being the driver of motor vehicle registration No. KAJ 228R Mitsubishi Pajero, drove the said motor vehicle on a public road without a driving licence.

In count III, he was charged with failing to carry a driving licence in that on the 22nd day of October, 2015 at about 11.00 am along Koinange Investment Development Limited parking yard in Nairobi County, being the driver of motor vehicle registration No. KAJ 228R Mitsubishi Pajero, failed to carry his driving licence.

The Applicant was convicted on his own plea of guilty. In count I, he was sentenced to pay a fine of Kshs. 50,000/= in default serve 6 months imprisonment. In count II, he was sentenced to a fine of Kshs.

80,000/= in default 2 months imprisonment and in count III, fine of Kshs. 10,000/= in default serve 2 months imprisonment. The sentences were ordered to run consecutively. The Applicant was unable to pay the fine and is currently serving the sentence. The same was passed on 23rd October, 2015 and has therefore served eight (8) months out of a possible ten months jail term.

In his application filed on 4th May, 2015, the Applicant prays that the sentences be revised on grounds that he was remorseful, he suffered from peptic ulcers and that he only had two more months to complete the sentence. The request of the Applicant was not opposed by the Respondent through the learned State counsel, Miss Nyauncho.

I have looked at the facts of the case. The same are grave given that the Applicant did not only injure a pedestrian but also damaged five (5) motor vehicles. He undertook to drive a motor vehicle while he did not have a driving licence. Be that as it may, he was sentenced to a cumulative period of ten (10) months of which he has already served eight. Although it is desirable that every accused person serves the entire sentence, I believe that the Applicant has learnt his lesson for the period he has been in prison. The eight months he has served is definitely sufficient sentence.

In the end, I set aside the order that the Applicant serves the entire 10 months imprisonment and substitute it with an order that he has served sufficient punishment. I order that he be and is hereby forthwith set free. It is so ordered.

DATED and DELIVERED this 27th day of June, 2016

G.W. NGENYE-MACHARIA

JUDGE

In the present of:

1. Applicant present in person.
2. Miss Akuja for the Respondent.