



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CRIMINAL REVISION NO.140 OF 2016**

**PETER IRERI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being a revision from the original conviction and sentence in TR. 296 of 2016 at Embu Chief Magistrate's Court by Hon. J. Ndeng'eri - RM on 3<sup>rd</sup> March, 2016 2016)*

**RULING IN REVISION**

1. The applicant has applied for revision of his sentence of a fine of Kshs 45,000/- in default to serve 14 days imprisonment following his own plea of guilty in respect of the offence of over speeding imposed upon him by the court of the Resident Magistrate at Embu on 3<sup>rd</sup> March 2016.
2. The facts of the case were as follows. On 14th May 2016 at around 12.30 p.m the applicant was driving motor vehicle registration No. KCC 607R, a Toyota matatu along Embu – Nairobi road at a speed of 85 Kph, which exceeded the prescribed upper limit of 80 Kph. The prosecution produced print outs from the speed gun, which were put in evidence as exhibit 1. The print outs from the speed gun show that the applicant's motor vehicle was driving at 85 Kph.
3. The applicant accepted as true the statement of facts as outlined by the prosecutor. The court then proceeded to enter a plea of guilty and proceeded to convict the appellant. In his mitigation, the applicant pleaded for leniency. He then stated that “*the vehicle was headed on a steep slope*”.
4. In sentencing the appellant, the court took into account his mitigation. It also took into account that this particular offence was prevalent in that locality and found that a deterrent fine was called for.
5. The applicant applied for revision of his sentence in accordance with section 362 of the Criminal Procedure Code (Cap 75) Laws of Kenya and Article 50 of the 2010 Constitution. The applicant's application for revision was brought by way of notice of motion based on the grounds on the face of that motion and his supporting affidavit. The major grounds in support of that motion are that the fine imposed was manifestly excessive, harsh and illegal, because the charge sheet was defective. Secondly, the trial court took into account immaterial facts in sentencing the applicant. Thirdly, the trial court acted on wrong principles of law in imposing the sentence of Kshs 45,000/-.
6. In his supporting affidavit, the applicant has repeated by deponing in the affidavit the same matters that he has set out in his grounds in support of his notice of motion. The only important matter he has deponed to in his affidavit is that this court should examine the correctness, legality or the propriety of the decision of the trial court and has urged the court to quash the conviction and reduce the fine imposed on

the applicant.

7. Ms Mbae for the state supported both the conviction and sentence.

8. I have examined the record of the proceedings that ended up in the imposition of a fine of Kshs 45,000/- in default to serve 14 days imprisonment. I find that the procedure adopted in taking the plea was proper. In other words, the plea was unequivocal. It is in accordance with the principles set out by the Court of Appeal in the case of *Adan v. R (1973) EA 445*.

9. As regards sentence, it is clear that the trial court did not carry out an enquiry as to the capability of the applicant to pay the fine. According to *Karanja v. R (1985) KLR 348*, the trial court is required to carry out an enquiry as to the ability of the convicted person to pay the fine. The failure to do so constitutes a misdirection on the part of the trial court. This misdirection entitles this court to interfere with the sentence imposed. Furthermore, I find that the sentence of Kshs 45,000/- in default to serve a sentence of 14 days imprisonment is not authorized by law. The default sentence should have been 6 months imprisonment and not 14 days. This is clear from section 28 (2) of the Penal Code (Cap 63) Laws of Kenya.

10. It is also clear from the record of the proceedings that the applicant was a matatu driver. According to his counsel, the applicant earns Kshs 17,500/- per month. In the circumstances, after taking into account that he was a first offender and that the trial court failed to make an enquiry as to his capability to pay the fine, I find that the sentence imposed was manifestly excessive.

11. I hereby reduce it to Kshs 20,000/- in default to serve 6 months imprisonment.

**JUDGEMENT DELIVERED, DATED and SIGNED** in open court at **EMBU** this **27<sup>th</sup>** day of **JULY, 2016**.

In the presence of Mr Andande holding brief for Mr. Mugendi for the applicant and Ms Mbae for the State.

Court clerk Njue

**J.M. BWONWONGA**

**JUDGE**

**27.07.16**