



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL REVISION CASE NO. 14 OF 2014

(ORIGINATING FROM MACHAKOS CHIEF MAGISTRATE’S COURT TRAFFIC CASE NO. 676 OF 2014)

STEPHEN KARANJA.....APPLICANT

VERSUS

REPUBLICRESPONDENT

REVISION

1. This file has been placed before me by the Deputy Registrar pursuant to the provisions of **Section 362 and 364** of the **Criminal Procedure Code**.
2. The appellant has moved this Court to exercise its revisionary powers on the grounds that having been charged with the offence of dangerous loading contrary to **Section 56(1)** of the **Traffic Act** he pleaded guilty and a fine of **Kshs. 200,000/=** was imposed. In default he ought to serve **one (1) year** imprisonment. He is not able to raise the fine hence his appeal to this court. He expresses his remorse.
3. I have been called upon to satisfy myself as to the correctness, legality and propriety of any findings, sentences or order made by the Subordinate Court.
4. I have examined the record of the trial court. The applicant was charged with the offence of dangerous loading contrary to **Section 56(1)** of the **Traffic Act. Cap 405 (K)**. Particulars thereof being that on the **30th May, 2014** at about 9.00am along **Machakos – Wote** road in **Machakos County** being the driver of motor-vehicle registration number **KBW 570N**. Isuzu Canter drove the said motor-vehicle on the public road and carried electricity poles extending the length of the vehicle hence posing danger to other road users.
5. Upon arraignment of the applicant before court on the **30th May, 2014**, the charge was read to him and he stated thus:-

“true”

6. A plea of guilty was entered. The Court Prosecutor on being called upon to outline the facts upon which the charge was founded, simply stated that the facts were as per the charge sheet. The applicant was not given an opportunity to either admit or deny the facts. The learned trial magistrate went ahead to convict him. This being the case, it was not established if indeed the applicant was the driver and if indeed he had carried electricity posts. Procedurally, they should have been produced as exhibits.
7. I am alive to **Section 382** of the **Criminal Procedure Code** which provides thus:-

Subject to the provisions hereinbefore contained, no finding, sentence or

order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of an error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, unless the error, omission or irregularity has occasioned a failure of justice:

Provided that in determining whether an error, omission or irregularity has occasioned a failure of justice the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings”

However, in this case the irregularity cannot be over looked as it occasioned an injustice. The plea was imperfect and unfinished. (*see Laurent Mpinga Versus Republic [1983] TLR 166*) .

8. The applicant has been in custody for duration of **one and half (1 ½)** months. The plea of guilty entered having been ambiguous the conviction thereof is a nullity. I do quash it and set aside the sentence meted out. The applicant shall be released forthwith unless otherwise lawfully held.
9. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 24TH day of JULY, 2014.

L.N. MUTENDE

JUDGE