

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL MISCELLANEOUS NO. 44 OF 2014

DICKSON NDOLO MAKENZI.....APPLICANT

VERSUS

REPUBLICPROSECUTOR

RULING

1. **Dickson Ndolo Makenzi**, the applicant seeks to be released on bail pending appeal.
2. He was convicted on his own plea of guilty on the charge of causing death by dangerous driving contrary to **Section 46** of the **Traffic Act** and sentenced to serve **five (5) years** imprisonment.
3. It is submitted by the Applicant's counsel **Mr. Wamwayi** that the court omitted to record in Kiswahili the actual words used by the applicant to constitute an admission which rendered the plea defective. Consequently, the applicant could not have been deemed to have been convicted on his own plea of guilty.
4. Further, he stated that applicant was tried in English, a language he did not understand hence there was no justification in depriving him of his liberty.
5. Opposing the application, the learned State Counsel, **Ms Kefa** called upon the court to balance the consideration of the liberty of the applicant and the proper administration of justice. She stated that the charges and facts were interpreted to the applicant in Swahili a language that he understood. The facts admitted constituted the offence therefore there were no exceptional circumstances that would warrant the court to exercise its discretion in favour of the applicant.
6. Right at the outset, I must note that the presumption of innocence no-longer applies to the applicant. The applicant admitted the charge. The manner in which the admission was recorded has been faulted. The language recorded is also faulted. What has not been faulted is the applicant's admission of facts of the case as outlined by the prosecution, although it is argued that it does not cure a defective plea.
7. From the foregoing it cannot be stated with certainty that the appeal will result into a reversal. In the premises, bail pending appeal is denied. I however, direct that the appeal which is already admitted to hearing shall be heard on priority basis.

DATED, SIGNED and DELIVERED at MACHAKOS this 23RD day of SEPTEMBER, 2014.

L.N. MUTENDE

JUDGE