REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.54 OF 2014

CHRISTOPHER NYAGA KIRAGU……APPLICANT

VERSUS

REPUBLIC……..……RESPONDENT

RULING

The Applicant, Christopher Nyaga Kiragu was charged with two (2) counts of **careless driving** contrary to **Section 49(1)** of the **Traffic Act**. The particulars of the offence were that on 12th April 2014 at Kahawa Barracks along Thika Road within Nairobi County, the Applicant, being the driver of motor vehicle registration No. KAU 053D Toyota Matatu, drove the motor vehicle without due care and attention by turning right without due care thereby hitting motor vehicle registration No. KBK 685F Toyota Matatu thus causing injuries to two (2) passengers, namely John Muasa Musembi and Salome Nyambura Kimani. When the Applicant was arraigned before the trial court, he pleaded guilty to the charge. He was convicted on his own plea of guilty and fined Kshs.50,000/- on each count or in default he was ordered to serve six (6) months imprisonment. The Applicant paid the fine after serving part of the sentence.

On 23rd June 2014, the Applicant moved this court under **Sections 362** and **364** of the **Criminal Procedure Code** seeking to have the said conviction and sentence revised and set aside. The Applicant stated that he was convicted allegedly on his own plea of guilty yet the record of the court showed that he had pleaded not guilty to the charge. He took issue with the fact that he had been charged with two (2) offences arising from the same set of facts. It was his view that he should have been charged with one count and not two counts from the same sets of facts. The Applicant ventilated his case through counsel (P.M. Mugo) during the hearing of the case. Ms. Aluda for the State opposed the application for revision. She submitted that the plea that was taken was unequivocal. However, if the court found that the plea that was taken was equivocal, she urged the court to order for a retrial.

This court has carefully considered the facts of this case. Under **Section 362** of the **Criminal Procedure Code**, this court has power to call for and examine the record of any criminal proceedings before a subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any decision made. Any aggrieved party, or the subordinate court itself, may bring to the attention of the High Court any proceeding or finding that requires to be revised by the court. In the present case, on perusal of the original file, it was apparent that part of the handwritten proceedings has been plucked from the record. The typed proceedings in my view, does not reflect the correct proceedings before the said court. This is because the trial court could not have requested the prosecutor to set out the facts of the case if the Applicant had not pleaded guilty to the charges. The Applicant confirmed the facts to be true after the facts were read. The Applicant was properly convicted on his own plea of guilty in accordance with the guidelines laid down **Adan –vs- Republic [1973] EA 445**.

The Applicant is not alleging that he did not understand the language in which the plea was read. The

claim by the Applicant that he was convicted on two counts arising from the same set of facts, which was illegal, is not supported by law. The Applicant was charged with the offence of **careless driving** contrary to **Section 49** of the **Traffic Act**. An ingredient of the offence is driving a motor vehicle ***"on a road without due care and attention or without reasonable consideration for other persons using the road."*** In the present case, the Applicant admitted to have carelessly driven his motor vehicle as a result of which it hit another motor vehicle causing injuries to two passengers. The act of injuring one passenger as a result of the careless driving constitutes an offence. The prosecution was therefore right when it charged the Applicant with the two counts of causing injury to the two passengers although the cause of action may have arisen from the same set of facts.

There is no merit in this request for revision. It is hereby dismissed. It is so ordered.

DATED AT NAIROBI THIS 20TH DAY OF NOVEMBER 2014

L. KIMARU

JUDGE