



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
CRIMINAL APPEAL NO.56 OF 2014

ROBERT KIPROTICH MITEI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal against the Conviction and Sentence by the Resident Magistrate

Hon. B. Limo at Kericho in Tr. Case No.563 of 2014 on 15.09.2014)

J U D G M E N T

1. Robert Kiprotich Mitei the Appellant was charged with two offences

Count I- Reckless driving contrary to Section 47 Sub Section (1) of the Traffic Act Chapter 403 Laws of Kenya.

“The appellant on the 13th day of September 2014, at about 20.00 hours along Kericho-Kisumu road at Kipsitet road block in Kericho County within the Republic of Kenya being the driver of a Motor Vehicle Registration number KBQ092J Actros Tipper Mercedes did drive the said vehicle recklessly having regard to all circumstances of the case including the nature condition and use of the road and rammed into the spikes at the road block erected by the police officers manning a road block at Kipsitet.”

Count II- Failing to stop contrary to Section 52 Sub Section (1) (c) as read with Sub Section (2) of the Traffic Act Cap 403 Laws of Kenya.

“The appellant on the 13th day of September 2014 at about 20.00 hours along Kericho Kisumu road at Kipsitet roadblock within Kericho County in the Republic of Kenya being the, driver of a Motor Vehicle Registration number KBQ 092J Actros Tipper Mercedes did fail to stop while so being required by a police officer in uniform number 74590 PC Malumasa and number 61846 Senior Sergeant Jackson Mwaidoma.”

2. He pleaded guilty on both counts and was fined Kshs.25,000 in default six (6) months imprisonment.
3. He was aggrieved and has appealed against the conviction and sentence raising the following grounds:

a. The trial Magistrate erred in law by not warning the appellant of consequences of plead guilty of the charges.

b. The trial Magistrate erred in law and in facts by failing to satisfy himself that the plea was totally unequivocal and that the appellants understood the elements of the offence and their penalty.

c. The trial Magistrate erred in law by handing down to the appellant excessive and harsh sentence and fine having in mind the appellant was first offender.

d. The trial Magistrate erred in law by passing the sentence before convicting the appellant.

e. The sentence and conviction against the appellant be reversed, set aside varied and/or be quashed.

d. When the appeal came for hearing the appellant only asked the court to consider forgiving him and reducing the fine.

5. The State through the learned State Counsel M/s Kivali conceded the appeal saying the plea was unequivocal since the language used when the plea was read and the facts given was not indicated by the court.

6. The record by the lower court is before me. The coram shows the presence of a clerk called Korir. His duty was to interpret. The language of interpretation is shown as English/Kiswahili. In his response to the charge he stated as follows:

Count I – Kwele

Count II – Kwele

The assumption is that the language used in reading the charge is the one used for the facts. The learned trial Magistrate recorded the words the appellant stated in admitting the charges. The appellant has nowhere said he did not understand the language used by the court.

After assessment of the record I do not find the issue of language to have been a problem in this matter. There are other issues making the plea unequivocal.

7. In Count two (2) the appellant was charged with the offence of failing to stop. It is nowhere indicated in the facts given that the appellant was stopped by the police officers or any police officer at the road block. The mere fact that he rammed into the spikes at the road block did not automatically mean he was stopped by the police and he refused to stop.

I therefore find the charge in Count 2 not to have been established. The plea of guilty entered thereon is quashed and the sentence on it if any is set aside.

8. Ground 1

The learned trial Magistrate had no obligation bestowed on him by the law to warn the appellant of the consequences of pleading guilty to the charges.

Ground 4

The procedure is that one must formerly be convicted before a sentence is passed. In this case there is no conviction and so the sentence was prematurely passed.

Ground 3

I have looked at the wording of the sentence.

“The accused is sentenced to a fine of Kshs.25,000 in default six (6) months for count 1&2 respectively.”

A reading of this would reveal that for both Count 1 & 2 the appellant was fined Kshs.25,000 in default six (6) months.

I have however seen the committal warrant where the clerk actually indicates that for each of count 1 and count 2 the appellant was fined Kshs.25,000 in default six (6) months.

9. There should never be any ambiguity in sentencing. The court must be clear and specific on the sentence being passed for each count. It is not for the clerk to interpret what the trial court meant. In this case the sentence is not clear.

10. Still on the same issue of sentence the default sentence is also not clear. Was it a prison term/community service order/suspended or what? It just says six (6) months.

11. The facts presented to the court confirm the charge in count No.1. However, the procedure adapted by the learned trial Magistrate is wanting. There is no conviction for the said count. I would have directed that the appellant appears before another Magistrate for the plea to be properly taken, but I have considered the fact that the appellant has been serving sentence since 15th September, 2014 which is two months by now.

12. I hereby allow the appeal and quash the plea of not guilty entered. The sentence imposed is also set aside. The appellant will be released unless otherwise lawfully held under a separate warrant.

Dated, signed and delivered in open court this 19th day of November, 2014

H.I.ONG'UDI

JUDGE

In the presence of

M/s Keli for State

Appellant Present in Person

Korir- Court Assistant