



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL REVISION NO. 619 OF 2013

REPUBLIC

VERSUS

JAMES KYUMWA APPLICANT

RULING ON REVISION

1. The Applicant, **James Kyumwa** was charged in count I with the offence of failing to fasten seat belt contrary to **section 119 (1) Rule 22A (3)** as read with **Rule 22A (4)** of the **Traffic Act Cap 403 Laws of Kenya**.

The particulars of the offence were that on the 14th day of November 2013 at around 6.30 a.m. along **Machakos Kitui road** in **Machakos County** being a driver of motor vehicle Reg. No. **KBH 164M** make **Toyota** matatu failed to fasten seat belt.

2. In count II, the Applicant was charged with the offence of failing to maintain parts and equipments contrary to **section 55 (1)** as read with **section 58 (1)** of the **Traffic Act Cap 403 Laws of Kenya**.

The particulars of the offence were that on the 14th day of November 2013 at about 6.30 a.m along **Machakos Kitui road** in **Machakos District** of **Eastern Province** being driver of motor vehicle Reg. No. **KBH 164M Toyota** matatu drove the said motor vehicle along the said road while fitted with eight defective seat belts.

3. When the Applicant was arraigned before the trial court, he pleaded guilty in both count I and II and was sentenced as follows:-

Count I - fined Kshs.500/=. The default sentence seems to have been cancelled.

Count II - fined Kshs.250,000/= in default 18 months imprisonment.

4. The Applicant was aggrieved by both the conviction and sentence and applied for revision under **Section 364** of the **Criminal Procedure Code**.
5. Under **rule 22A (4)** of the **Traffic Rules** made under **section 119 (1)** of the **Traffic Act Cap 403 Laws of Kenya**, a person who fails to wear a seat belt is guilty of an offence and is liable to a fine of Kshs.500/=. The default sentence for a fine of Kshs.500/= is not more than 14 days. In the absence of any express provisions relating to imprisonment or detention period, **Section 28** of the **Penal Code** comes into play.
6. The penalty provided for by **section 58 (1)** of the **Traffic Act** is a fine not exceeding Kshs.400,000/= or to imprisonment not exceeding two years or to both. However, the lower court

record reflects the rank of the trial magistrate as a Resident Magistrate. **Section 4** of the **Magistrate’s Court’s Act Cap 10 Laws of Kenya** provides that the Resident Magistrate’s Court shall have and exercise such jurisdiction in cases of criminal nature as provided for under the **Criminal Procedure Code**. **Section 7 (2)** of the **Criminal Procedure Code** provides as follows:-

“Subject to subsection (1), a subordinate court of the first class may pass the following sentences in cases where they are authorized by law-

- a. **imprisonment for a term not exceeding seven years;**
- b. **a fine not exceeding twenty thousand shillings.”**

- 7. Under **section 2** of the **Magistrate’s Court’s Act (Cap 10)**, a Magistrate’s Court of the 1st class means the Resident Magistrate’s Court which is duly constitutional when held by a Chief Magistrate, Senior Principal Magistrate, Principal Magistrate, Senior Resident Magistrate or Resident Magistrate (See Section 3 (1) of the Magistrate’s Court’s Act, **Cap 10 Laws of Kenya**).
- 8. However, the Resident Magistrate did not have the requisite jurisdiction to impose a fine of Kshs.250,000/=. The fine of Kshs.250,000/= is also harsh and excessive taking into account the defects mentioned in the particulars of the offence.
- 9. With the foregoing, the sentences imposed by the trial court are hereby set aside and substituted with the following sentences:-

Count I – Kshs.500/= in default 14 days imprisonment.

Count II – Kshs. 20,000/= in default 4 months imprisonment.

Right of Appeal 14 days.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 19th day of December 2013.

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B. THURANIRA JADEN

JUDGE