

REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT MACHAKOS

Criminal Revision 471 of 2012

IBRAHIM MOHAMEDACCUSED

VERSUS

REPUBLIC.....PROSECUTOR

ORDER ON REVISION

The accused was arraigned before the Principal Magistrate's Court at Mavoko on 10th September, 2012 charged with the traffic offence of permitting the use of motor vehicle on road with a load greater than the load specified contrary to section 55(2) and rule 41(2) of the Legal Notice No. 118 dated 12th September, 2008 of the Traffic Act. The accused pleaded guilty and was fined Kshs. 50,000/= in default 2 months imprisonment. It would appear that later, on the same day by a letter dated 10th September, 2012, the accused applied to the same court for change of plea. The Honourable Magistrate acceded to the request, called for the file, allowed the application and proceeded to take a fresh plea despite having earlier convicted and sentenced the accused. The accused this time around pleaded not guilty and was admitted to a bond of Kshs. 100,000/= with a surety of like sum or cash bail of Kshs. 50,000/=. The case was then set for hearing on 14th November, 2012 with a mention on 24th September, 2012.

Sensing the irregularity in the subsequent proceedings, the magistrate in charge of the station, Hon. T.A. Odera, P.M. forwarded the file to this court with a view to correcting the anomaly in the exercise of powers of revision donated to this court by section 363(2) of the Criminal Procedure Code. This jurisdiction is exercised where this court deems that the criminal proceedings before any subordinate court to be incorrect, illegal, irregular and or suffers from one form of impropriety or the other.

In this case, I have no doubt at all in my mind that the proceedings and orders made by the learned Resident Magistrate subsequent to the conviction and sentencing of the accused were irregular. Once she convicted and imposed the sentence, she became *functus officio*. She had no jurisdiction to recall and vacate the previous proceedings. Much as an accused has a right to change his plea any time before sentence, he lost that right the moment he was convicted and sentenced. Since the subsequent proceedings were irregular, the same are hereby vacated with the consequence that the accused either pays the fine of Kshs. 50,000/= or faces a jail term of 2 months as previously ordered.

DATED, SIGNED at MACHAKOS this 19TH day of SEPTEMBER, 2012.

ASIKE –MAKHANDIA

JUDGE