

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL REVISION NO. 3 OF 2011

GEORGE TENGENYA ONYINKWAAPPLICANT

-VERSUS-

REPUBLIC RESPONDENT

ORDER ON REVISION

Having called and perused the record of the trial court I am not satisfied that this is a fit and proper case for revision. The accused was charged with six traffic offences. He pleaded guilty to all the counts and was sentenced upon conviction on his own plea of guilty to a total fine of kshs. 23,000/= in default imprisonment for a total of 300 days. The accused now seeks revision of the above sentence on the grounds that he was a first offender, pleaded guilty with intent of being granted leniency and that the sentence imposed was manifestly harsh and excessive.

An order on revision can only be made where the proceedings in the subordinate court are found to be incorrect, illegal, suffers from impropriety and or are generally irregular. I do not discern such misgivings in the circumstances of this case. There is nothing illegal, irregular or incorrect with regard to the sentences imposed as aforesaid. It was perfectly legal. The issue as to whether the sentences aforesaid are manifestly harsh and excessive is appealable. Section 364 (5) of the **Criminal Procedure Code** is explicit that ***“When appeal lies from a finding, sentence or order, and no appeal is brought, no proceedings by way of revision shall be entertained at the insistence of the party who could have appealed”***. This is the quandary, the convict finds himself. There is however indication that indeed the convict desires to appeal going by his letter to the chief magistrate’s court dated 20th January, 2011. That is where his remedy lies. Otherwise revision sought is denied.

Revision, dated, signed and delivered at Kisii this 25th day of February, 2011.

ASIKE-MAKHANDIA

JUDGE