



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL REVISION NO. 23 OF 2011

(Arising from Traffic Case No. 4391 of 2011 & 4392 of 2011 of the Chief Magistrate’s Court at Mombasa: T. Ole Tanchu – S.R.M.)

- 1. SHREEJI ENTERPRISES LTD
- 2. JAPHETH MBAI KAVITI.....APPLICANTS

=VERSUS=

REPUBLIC.....RESPONDENT

RULING

By their letter dated 30th May 2011 MESSRS A.B. PATEL & PATEL ADVOCATES have sought a review of the sentence imposed by the learned Senior Resident Magistrate sitting at Mombasa Law Courts in **TRAFFIC CASE NO. 4391/2011 REPUBLIC –VS- JAPHETH MBAI KAVITI** and **TRAFFIC CASE NO. 4392 of 2011 REPUBLIC –VS- SHREEJI ENTERPRISES LTD**. In the said traffic cases the accused persons faced a charge of ***‘using a motor vehicle on a road with a load greater than the load specified contrary to S. 56(1) as read with S. 58(1) and Rule 41(2) of the Legal Notice No. 118 dated 12th September 2008 of the Traffic Act Cap 403 Laws of Kenya’***. The accused both entered a plea of guilty to the charge and each was fined Kshs.300,000/- in default one (1) year imprisonment. It is alleged that the fine imposed was far in excess of the maximum allowed for that offence. In each traffic case the particulars alleged that the accuseds were carrying a load of 100,400 kgs instead of the allowed load of 48,000 kgs thereby each had an excess load of 52,400 kgs.

S. 56(1) of the Traffic Act provides:

“S 6(1) No vehicle shall be used on a road with a load greater than the load specified by the manufacturer of the chassis of the vehicle or than the load capacity determined by an inspector under this Act”

The penalty for a violation of S. 56(1) is provided by Rule 42 of LN No. 118 of 2008. Rule 41(2) sets out a scale indicating fines payable. For an excess weight of over 10,000 kgs the allowable fine upon a first conviction is Kshs.200,000/-. In both cases the prosecutor gave no indication that the accuseds were

repeat offenders. They were therefore to be treated as 1st offenders. The fine of Kshs.300,000/- was therefore clearly ultra vires the law and was an unlawful fine. The accuseds ought not to have been fined an amount greater than that prescribed by the law. I therefore direct that the amount of Kshs.100,000/- be immediately refunded to each of the two accused persons.

It is so ordered.

Dated and Delivered in Mombasa this 15th day of July 2011.

M. ODERO

JUDGE