

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

REVISION CASE NO. 603 OF 2011

COLLINS MATOKE MOGAKA.....APPELLANT

VERSUS

REPUBLIC RESPONDENT

RULING ON REVISION

The applicant, **COLLINS MATOKE MOGAKA**, was convicted for the offence of Careless Driving **contrary to section 49 (1) of the Traffic Act**. He was then sentenced to 5 months imprisonment.

He has come to the High Court seeking revision of the sentence, as he believes that the said sentence was excessive.

It is common ground that the applicant was a first offender. In the circumstances, the learned state counsel, Mr. Mulati, submitted that the sentence was illegal. He therefore conceded the applicant's request for a revision of the sentence.

Section 49 (1) of the Traffic Act provides as follows;

“Any person who drives a motor vehicle on a road without due care and attention or without reasonable consideration of other persons using the road shall be guilty of an offence and liable for a first offence to a fine not exceeding five thousand shillings, and for a second or subsequent offence to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding three months.”

Clearly, therefore, a first offender is liable to be fined.

Secondly, a person who commits a second or subsequent offence of careless driving is liable to a fine or imprisonment not exceeding 3 months.

Therefore, the imprisonment of 5 months is unlawful. I therefore set it aside. In lieu thereof, and considering that the applicant has already been in prison for over one month, I order that he pays a fine of KShs.500/- only.

Dated, Signed and Delivered at Nairobi this 10th day of November, 2011.

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FRED A. OCHIENG
JUDGE