

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 319 of 2008

ALLAN NGUGI

WAMBUE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant was charged with the offence of permitting the use of an unroad worthy motor vehicle on a public road contrary to **Section 55(1)** as read with **Section 58(1) of the Traffic Act (Cap 403, Laws of Kenya)**. The Appellant pleaded guilty to the charge, and was convicted of the offence, on his plea of guilty, and was sentenced to a fine of Kshs 200,000/= or in default to imprisonment of one year.

The Appellant paid the fine of Shs 200,000/= as ordered by the court but has appealed to this court on one ground only namely, sentence.

It was the submission of Mrs Nancy Njoroge learned Counsel for the Appellant that the learned trial magistrate exceeded her jurisdiction by fining the Appellant a sum of Shs 200,000/= or in default to imprisonment for one year. Counsel submitted that the relevant provision of the law (**Section 58(1)**) of the **Traffic Act (Cap 403 Laws of Kenya)**, provides for a fine of Shs 20,000/= or a term of imprisonment of nine months and not one year. The sentence was therefore illegal.

Counsel relied on the case of **WAINAINA vs. REPUBLIC [1986] K.L.R. 615**, where the High Court dismissed an Appellant's appeal but reduced the sentence. Mrs Njoroge asked the court to do the same in this case.

Mr. Nyakundi learned State Counsel, was gracious enough to concede the appeal on the sole ground, the trial magistrate exceeded her jurisdiction, and passed an illegal sentence.

I agree with both Counsel. Firstly a person who pleads guilty and is convicted and sentenced on the said plea can only appeal on the question of the extent and legality of said sentence. Those are the provisions of **Section 348** of the **Criminal Procedure Code (Cap 75, Laws of Kenya)**.

Secondly **Section 58(1)** of the **Traffic Act** prescribes a sentence of Shs 20,000/= or imprisonment of 9 months for contravention of either the provision of **Section 55(1)** of the **Traffic Act** (*permitting the use of an unroad worthy vehicle*), or **Section 56** (overloading a vehicle *i.e.* using a vehicle on a road with a load greater than the load specified by the manufacturer of the chassis of the vehicle, or (*greater*) than the load capacity determined by an Inspector under the Act). As the Appellant pleaded guilty to the charge the proper sentence under **Section 58(1)** of the **Traffic Act** ought to have been a fine of Shs 20,000/= or in default imprisonment for a term of 9 months. A fine in excess of, or a term beyond, the amount or period

prescribed was patently illegal and calls for interference by this court on that ground.

The Appeal thus succeeds on the question of both the extent and legality of sentence. In exercise of the power conferred upon this court by **Section 354(3)(b) of the Criminal Procedure Code**, I reduce the amount of fine from Kenya Shillings Two hundred thousand (Kshs 200,000/=) to Kenya Shillings Twenty thousand (Kshs 20,000/=). As the Appellant paid the said sum of Kshs 200,000/=, I direct that the excess of Kshs 180,000/= be forthwith refunded to the Appellant.

There shall be orders accordingly.

Dated, delivered and signed at Nakuru this 26th day of February 2010

M. J. ANYARA EMUKULE

JUDGE