

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Criminal Revision 18 of 2010

DENA EDWARD MWARINGA APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

Before me is a file for review. In Traffic Case No. 3064 of 2010 before the learned Senior Resident Magistrate, Mombasa, the accused herein **DENA EDWARD MWARINGA** was charged with count No. 1 of **CARELESS DRIVING CONTRARY TO SECTION 49 (1) OF THE TRAFFIC ACT CAP 403. LAWS OF KENYA.** On count No. 2 the same accused was charged with **DRIVING A MOTOR VEHICLE ON A PUBLIC ROAD WITHOUT A T.L.B. LICENSE CONTRARY TO SECTION 4 (1) OF THE TRAFFIC ACT.** Count No. 3 of **DRIVING MOTOR VEHICLE WHILE FITTED WITH A WORN OUT TYPE CONTRARY TO SECTION 55 (1) AS READ WITH SECTION 58 OF THE TRAFFIC ACT.** Count No. 4 of **DRIVING A PUBLIC SERVICE VEHICLE ON A PUBLIC ROAD WITHOUT A DRIVER'S BADGE** and lastly the accused was charged on Count No. 5 of **FAILING TO DISPLAY PHOTOGRAPH.** The plea was taken on 11.03.2010 and the accused pleaded guilty to all five counts. Thereafter the facts were read out to him to which the accused replied

“The facts are true”

The learned trial magistrate then proceeded to convict the accused on all five counts. When asked to give his mitigation the accused said

“I was running away because I knew I had committed offence. I ask for leniency because I have four children who depend on me”

The court after considering his mitigation sentenced the accused to serve three (3) months imprisonment on each of counts 1, 2, and 3 and on count Nos. 4 and 5 he was sentenced to serve fourteen (14) days imprisonment on each. The sentences were ordered to be served concurrently.

In a letter filed in court on 26.3.2010 it is submitted that the sentences were harsh and excessive. With respect I do not agree. The learned trial magistrate did take plea and recorded the facts as required by law. There was no procedural defect in the manner in which the plea was recorded. The facts indicate that the accused had been arrested and ordered by police to drive his vehicle to the police yard. Instead he and his conductor both jumped out of the vehicle leaving it in motion. This is dangerous and reckless in the extreme. The vehicle could easily have hit and/or even killed somebody. I find that the sentences were merited and were neither harsh nor excessive given the circumstances. I am not inclined to interfere with the same. As such I find no merit in this review and I do order that the accused serve his sentence as imposed by the lower court.

Dated and delivered in Mombasa this 30th day of March 2010.

M. ODERO
JUDGE