



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MOMBASA  
Criminal Revision 95 of 2010**

*[From Original Conviction and Sentence in Criminal Case No. 2134 of 2009 of the*

*Chief Magistrate's Court at Mombasa R. Ondieki Ag. S.R.M.]*

**EMMANUEL MUGENDI JOHN ..... APPLICANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

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**RULING**

This matter was referred to the High Court by the Hon. Chief Magistrate, Mombasa Law Courts. The review arises from **Traffic Case No. 2134/2009 REPUBLIC –VS- EMMANUEL MUGENDI JOHN** heard and determined by **HON. R. ONDIEKI Ag. SENIOR RESIDENT MAGISTRATE**. The accused in the Traffic Case had been charged with four counts of Causing Death by Dangerous Driving contrary to Section 46 of the Traffic Act, Laws of Kenya. The accused pleaded guilty to all four counts. The facts were then duly read out by the court prosecutor **INSPECTOR MAIYO**. The accused accepted the facts stating in his own words

*“The facts are correct”*

The learned trial magistrate proceeded to convict the accused. However the magistrate in convicting simply stated

*“Convicted on his own plea of guilty”*

The magistrate did not indicate for which of the four counts (or indeed whether on all four counts) he was convicting the accused. This was remiss on his part. The court ought to have indicated how many and which counts the accused stood convicted of.

Furthermore after listening to the mitigation offered by the accused, the trial magistrate stated

*“I have listened to the mitigations and taken into account the case of the offender. He is a youth. I shall sentence him to a fine of Kshs.40,000/- in each count and in default to serve 3 years imprisonment ...”*

Once again the trial magistrate does not indicate for which counts the fine has been imposed and the default sentence is also unclear. Is it 3 years in default of paying fine for each count (which counts have not been specified) or is it a cumulative sentence of three years. It is imperative that magistrates make their orders and sentences very concise and clear so that there can be no ambiguity. This is not the case here. The anomalies which I have noted render the proceedings in the lower court defective. Ordinarily I would direct that the plea be taken afresh. However I note that having been sentenced and jailed on 26<sup>th</sup> March 2009 the accused has already spent more than one year in jail, it would be unjust and prejudicial to have the accused brought back for plea and possibly a fresh sentence. As such I do review the sentence

and find that the time already served is sufficient punishment. The accused is to be set at liberty forthwith unless he is otherwise lawfully held. For avoidance of doubt the suspension of the accused's driving licence for a period of five (5) years remains in force.

**Dated and Delivered at Mombasa this 7<sup>th</sup> day of May 2010.**

**M. ODERO**

**JUDGE**