



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Criminal Revision 98 of 2010

MASORO KITI KOMBE.....APPLICANT
-VERSUS-
REPUBLIC.....RESPONDENT

RULING ON REVISION

This matter comes from **Traffic Case No. 6211 of 2010** at the Chief Magistrate's Court, Mombasa.

The applicant was charged before **Mr. T. Ole Tanchu**, SRM with the offence of careless driving contrary to s.49 (1) of the Traffic Act (Cap. 403, Laws of Kenya): the particulars being that he, on 2nd June, 2010 at about 7.00p.m along Abdil Nassir Road in Mombasa District of Coast Province, being the driver of motor vehicle Reg. No. KBJ 550D Nissan Matatu, drove the said motor vehicle along the said road without due care and attention to other road users, in that he hit and knocked down one **Pauline Nyaboke** who was crossing the road from the right side to the left side, injuring her slightly.

On 11th June, 2010 the charge was read over and explained to the accused, and his plea was: "It is true". A plea of guilty was entered, and the relevant facts read out by the prosecution, whereupon the accused thus pleaded:

"The facts are true. I admit them".

The accused was thereupon convicted on his own plea of guilty. The prosecutor informed the Court that the accused was a first offender, which the accused confirmed, and asked for leniency. The decision of the learned Magistrate is thus recorded:

"Circumstances of offence and mitigation considered. Accused to serve one month's imprisonment".

Such are the proceedings which have occasioned this application for revision. The applicant, through the firm of M/S. Mutisya Bosire & Co. Advocates, sought revision of the trial Court's decision.

The main complaint is that the trial Court sentenced the applicant to a one-month term of imprisonment **without the option of a fine**. It was contended that the prosecution had confirmed to the Court that the applicant herein was a **first offender**; and so "the Court ought to have fined him a sum not exceeding five thousand Shillings".

Learned counsel, **Mr. Bosire** urged that the sentence imposed on the applicant had been "in contravention [of] section 49(1) of the Traffic Act".

Section 49(1) of the Traffic Act thus provides:

"Any person who drives a motor vehicle on a road without due care and attention or without reasonable consideration for 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."

Those terms of the statute are quite clear: for an accused who is a first-time offender, such as the applicant herein, the maximum penalty is a fine of Kshs. 5,000/=. Consequently, the sentence imposed had no legal basis.

I hereby set aside the sentence imposed by the Subordinate Court, upon revision, and substitute it with a fine of **Kenya Shillings Two Thousand Five Hundred (Kshs. 2,500/=)**. As soon as that amount is paid, the applicant shall forthwith be set at liberty.

Orders accordingly.

DATED and **DELIVERED** at **MOMBASA** this 18th day of June, 2010.

J. B. OJWANG

JUDGE

Coram: *Ojwang, J*

Court Clerk: *Ibrahim*

For Applicant: *Mr. Bosire*