



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**

**Criminal Revision 107 of 2010**

**ABDARIZAK MOHAMED.....APPLICANT**

-VERSUS-

**REPUBLIC..... RESPONDENT**

**RULING ON REVISION**

The applicant was the accused person in Traffic Case No. 8302 of 2010 at the Chief Magistrate's Court, Mombasa, being charged in two separate counts.

The charge in the first count was reckless driving contrary to s.47(1) of the Traffic Act (Cap. 403, Laws of Kenya). It was alleged that the applicant, on **27<sup>th</sup> July, 2010** at about 12.05a.m. along Makupa Causeway at Kibarani in Mombasa District of Coast Province, being the driver of motor vehicle Reg. No. KAH 342U ZC 3762 Mercedes Benz trailer, drove the said motor vehicle along the said public road without regard to other road users or the amount of traffic at that time or the volume of traffic which was to be expected, by driving the said motor vehicle in a reckless manner, making a U-turn and jumping over the pavement from the dual carriageway from the Makupa direction to join the dual carriageway from the Changamwe direction, obstructing other road users.

From the same incident, arose the second count in the charge, of failing to comply with traffic signs contrary to s. 52 (c) of the Traffic Act; and the allegation was that the applicant, on the date aforementioned, and at the time and place aforementioned, being the driver of motor vehicle Reg. No. KAH 342 U ZC 3762 M/Benz trailer, drove the said motor vehicle along the said public road and failed to comply with the traffic signs by making a U-turn and jumping over the pavement.

This matter came up before the Senior Resident Magistrate, the **Hon. T. Ole Tanchu** on **27<sup>th</sup> July, 2010**, and the charge was read out and explained to the applicant herein who, to each count, stated: "It is true"; and after each such response, the Court recorded: "Plea of guilty entered". The prosecutor, **Inspector of Police Sumba**, thereafter read out the facts of the case.

On **27<sup>th</sup> July, 2010** at about midnight, the applicant herein was driving motor vehicle Registration No. KAH 342U, Trailer No. ZC 3762, Mercedes Benz, along Makupa Causeway. On reaching Kibarani, near the railway fly-over, without due care to other road users or to the amount of traffic on the road at that time, the applicant made a U-turn from one highway to another, at a place not designed for entry, thereby obstructing other motor vehicles using the said road at that time, and in a reckless manner such as could cause an accident. Other road users made a report of the incident at Makupa Police Station, and Police Officers visited the scene, finding the lorry in question at the yard, and finding also the applicant who was identified as the one who had been driving the said lorry; and the applicant was then arrested and charged.

The applicant's response was: "**Facts are true**" – whereupon the Court convicted him on his own plea of guilty.

The prosecutor asked that the applicant be treated as a first offender. The Court, after giving the applicant an opportunity to make a statement in mitigation, made its record and delivered sentence as follows:

***"Circumstances of offence considered. I have noted sentiments by accused. Accused to serve 1 month's***

***imprisonment on each count. Sentences to run concurrently. Accused shall hereby be suspended from driving for a period of three months from the date hereof.”***

Learned advocates, M/s. Mushelle & Co. Advocates, have brought before this Court, on behalf of the applicant, a request for the revision of the penalty imposed by the learned Magistrate. The ground for this request is that the applicant was not given the option of paying a fine, even though he was a first offender, and he had pleaded guilty.

When an accused person, upon the charge being read out and explained, in clear conscience and in a consistent manner, pleads guilty, this becomes a relevant fact in the exercise of such discretion in sentencing as the Court may have: such a person saves the Court's time, and thus contributes to the Court's capacity to render judicial work for many others who come along, all the time. It is not clear that the learned Magistrate had taken this factor into account.

Secondly, and still more important, is the terms of the relevant provisions of the statute law.

Section 47(1) of the Traffic Act thus provides:

***“Any person who drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road and the amount of traffic which is actually at the time or which might reasonably be expected to be on the road, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both and the court shall exercise the power conferred by part VIII of cancelling any driving licence or provisional driving licence held by the offender and declaring the offender disqualified for holding or obtaining a driving licence for such period as it thinks fit.”***

By that provision, a discretion is entrusted to the Court, to impose a fine, or to subject the offender to a term of imprisonment, or to impose a fine and a term of imprisonment at the same time; and there is a further discretion entrusted to the Court, of ordering cancellation of driving licence.

Although the second count was in respect of s. 52 (c) of the Traffic Act, it happens that such a section is not part of the Act; there is s. 52(1) and (2), and under s.52(1) there is (c). It is not clear that this count of the charge was properly framed. Consequently I find the second count to have been a defective charge; and I will assess this matter only in relation to the first count.

On the first count, by the strict terms of s. 47(1) of the Act, the Court would have been justified not only to prefer the sentence of imprisonment, but also to impose disqualifications in respect of the driving licence. However, such sentencing preferences are to be exercised judicially, and this entails that the record should show the reasons taken into consideration. In this instance, the reasons for the learned Magistrate's preference are not recorded; and this is cause for this Court to exercise the revision jurisdiction.

Secondly, as already stated, the applicant who was a first offender, had pleaded guilty without wasting the Court's time. These are circumstances which should have weighed in the Court's exercise of the sentencing discretion.

For the reason that such relevant factors were missed, in the imposition of sentence by the Court, this Court will exercise the revision discretion accordingly; and I hereby order as follows:

- (1)The sentences imposed by the Court of first instance in respects of count 1 and count 2 of the charge, are set aside.***
- (2)The conviction in respect of the second count of the charge, is quashed and vacated.***
- (3)In respect of the 1<sup>st</sup> count of the charge, a different sentence is now substituted: the applicant shall pay a fine of Kshs. 4,500/=, and he shall thereupon be set at liberty unconditionally.***

***Orders accordingly.***

**DATED and DELIVERED at**

**MOMBASA** this 30<sup>th</sup> day of July, 2010.

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**J. B. OJWANG**

**JUDGE**

