



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

Criminal Revision 102 of 2010

[Arising from Traffic Case No. 6968 of 2010 of the Chief Magistrate's Court at Mombasa: T. Ole Tanchu – S.R.M.]

**JACKSON MATI APPLICANT
VERSUS
REPUBLIC RESPONDENT**

RULING

The Applicant had been charged before the lower court with the following four (4) offences.

- (1) **Careless Driving contrary to Section 49(1) of the Traffic Act.**
- (2) **Driving a Defective Motor Vehicle contrary to Section 58(1) of the Traffic Act.**
- (3) **Failing to stop contrary to Section 73(1) of the Traffic Act**
- (4) **Driving without a PSV badge contrary to Section 65(A) of the Traffic Act.**

The Applicant pleaded guilty to all four counts and maintained his plea of guilty even after the facts were read out to him. He was convicted and later sentenced to serve three (3) months imprisonment on the first count, 21 days imprisonment on the third count and 21 days imprisonment on the fourth count. The court acquitted the Applicant on the second count as no Inspection Report had been attached. The sentences were all to run concurrently.

Counsel for the Applicant argues that the Applicant ought not to have been sentenced to a term of imprisonment without the option of a fine. He contends that S. 49 (1) of the Traffic Act provides for a fine of Kshs.5,000/- upon a first conviction. I have carefully perused the said provision and with respect I do not agree. S. 49(1) states that upon a first conviction an offender is **“liable”** to a fine of Kshs.5,000/-. The word **“liable”** does not in my view make this a mandatory provision. It simply denotes that the trial magistrate **may** impose a fine of upto Kshs.5,000/-. Nowhere in S. 49(1) is it stated that a prison term may not be imposed nor does it make the imposition of a fine the **only** sentence available. The wording of S. 49(1) does not remove the trial magistrate's discretion to impose sentence. The discretion remains with the trial magistrate to impose a sentence commensurate with the circumstances. I have read the facts of this

case and in my view the Applicant acted extremely recklessly in jumping out of his moving vehicle which went on to hit a pedestrian and a kiosk. The prison term imposed by the learned magistrate was in those circumstances quite appropriate. I find no reason to interfere with the same. As such I decline to revise the sentences. The Applicant will serve his term as imposed by the trial court.

Dated and Delivered in Mombasa this 13th day of July 2010.

M. ODERO

JUDGE