

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Criminal Revision 104 of 2010

*[Arising from Traffic Case No. 7107 of 2010 of the Chief Magistrate's Court at
Mombasa: T. Ole Tanchu – S.R.M.]*

ERIC NYABURI APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

The accused person **ERICK NYABURI**, sought revision of his sentence in Tr. 7107 of 2010. In that case the accused pleaded guilty to a charge of **CARELESS DRIVING CONTRARY TO SECTION 49(1) OF THE TRAFFIC ACT CAP 403**. The accused pleaded guilty to the charge. The facts were read out to him as required by S. 207 of the Criminal Procedure Code and the accused maintained his plea of guilty. The learned trial magistrate then convicted the accused and after listening to his mitigation sentenced him to serve one (1) month in prison. The accused claims that the trial magistrate erred in failing to allow him the option of a fine.

S. 49(1) of the Traffic Act under which the accused was charged provides

“49(1) 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”.

The term used in this provision is **“liable”**. This allows the trial court a discretion on whether to impose a fine or not. Nowhere does the law make it mandatory that a fine be imposed. As such the learned trial magistrate acted well within his discretion in imposing a term of imprisonment without an option of a fine. The discretion on what sentence to impose lies exclusively with the trial court. The High Court will not interfere with such discretion unless it has not been judiciously exercised. That has not happened here. I find that there has been no error or misdirection on the part of the trial magistrate and I do therefore decline to revise this sentence. The accused will serve one month in prison as imposed by the trial court.

Dated and Delivered in Mombasa this 7th day of July 2010.

M. ODERO

JUDGE