



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**CRIMINAL APPEAL NO. 58 OF 2009**

**EDWIN JUMBA ISIAHO.....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

***(Appeal from the sentence of the Senior Principal Magistrate at Kericho,***

***Hon. W. Nyarima given in Kericho SPM TR. C. NO. 2131 of 2009)***

**JUDGMENT**

The appellant, Edwin Jumba Isiaho, was charged with and convicted on 8/9/2009 on his own plea of guilty of the offence of careless driving (in count I) and interfering with safe driving (in count II) by the Senior Principal Magistrate at Kericho in Traffic Case No. 2131 of 2009 and sentenced to three months imprisonment in Count I and to a fine of Kshs 1 000 and in default ten days imprisonment in Count II.

The offence of careless driving in Count I was under section 49(1) of the Traffic Act, Cap 403, and the offence in Count II was under section 59 (2) of the same Act. Section 49(1) of the Traffic Act stipulates:

***“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”***

Section 59(2) of the said Act stipulates:

***“In no motor vehicle shall passengers be carried in such numbers or in such a position as to be likely to interfere with the safe driving of such motor vehicle; and in the event of a contravention of this subsection the driver and the person in charge of the motor vehicle shall be guilty of an offence.”***

The appellant had one ground appeal namely that:-

***“The Trial Magistrate erred in law and in fact by convicting and sentencing the appellant which sentence was extensive to the circumstances without the option of fine”***

Mr. Maengwe, Learned Counsel for the appellant, abandoned the appeal against conviction and pursued the appeal only as it relates to sentence. He contended that the Trial Court misdirected itself in sentencing the appellant to imprisonment in Count II without the option of a fine when the offence was a first offence.

Miss M.N. Idagwa, the Learned State Counsel for the Respondent conceded, rightly in my view, the appeal.

I have duly considered the appeal and I find merit in the submission advanced by Advocate Maengwe. The Trial Court erred in not giving the appellant the option of a fine on the first count. I accordingly set aside the sentence imposed in Count I and instead, I impose a fine of Kshs 2,500 and in default 3 months imprisonment. The sentence in Count II remains intact.

The appeal is allowed to this extent and upon these orders.

**DATED** at **KERICHO** this 28<sup>th</sup> day of October, 2010

**G B M KARIUKI, SC**

**RESIDENCE JUDGE**

**COUNSEL APPEARING**

Mr. G.M Maengwe Advocate for the Appellant

Miss. N.M Idagwa State Counsel for the Respondent