REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

OF KISII

Revision Case 138 of 2009

BENARD OMBATI OMBONGI……APPELLANT

-VERSUS-

REPUBLIC ……..……RESPONDENT

REVISION

On 11/11/2009 the accused appeared before the Resident Magistrate, Keroka, for plea on a charge of causing obstruction contrary to *section 53 (1)* as read with *section 53 (4)of the Traffic Act* (*Cap403)* whose particulars were that on that day at about 3.30 p.m along Keroka/Sotik /Masimba junction in Masaba District within Nyanza province being the driver of motor vehicle registration number KAY 394 S Trailer number ZB 8566 make BEIN-BEING did cause obstruction by stopping at the junction in a manner likely to cause danger to other persons using the road. To the charge, he answered:

"*It is true."*

The court entered a plea of guilty. The prosecutor indicated that he had passed by the Traffic office and found the accused had previously been convicted and a fine imposed in default 6 months. The court sentenced the accused to 6 months in jail and noted as follows:

"*Ihave noted the current rise in road carnage due to such acts as the accused persons*."

This file was placed before this court for revision.

I would like to draw the court's attention to the provisions of *section 207 of the Criminal Procedure Code* and the decision in *Adan.V.Republic. [1973] EA 445* regarding the procedure to be followed in plea taking. Plea in this case was not satisfactorily taken. The words *"it is true"* in answer to the charge are not a satisfactory way of recording a plea of guilty. Was the accused saying *"it is true"* to stopping at the junction or to the fact the way he stopped caused obstruction or was likely to cause obstruction? As was stated in *Kariuki .V. Republic [1984] 809,* the words recorded by the trial court as the accused person's answer to the charge meant nothing and were neither an admission nor a denial of the facts.

Secondly, it was incumbent upon the court to ask the prosecution to narrate the facts of the case for the court to see if they disclosed the offence charged, and for the accused to be

called to react to them. Thirdly, the court did not enter a conviction in the case.

Fourth, the prosecutor, when he stated the accused had a previous record, ought to have been asked to give the particulars of the record and to indicate whether that previous conviction was relevant. It was also expected that the accused be asked to indicate if it was true that he had a previous record.

Regarding sentence, no reason was given why a fine could not suffice for the offence. The accused had pleaded guilty and he ought to have been given credit for that. This was not a serious offence.

I find that the incorrect procedure for recording plea resulted in unsatisfactory trial. The conviction is quashed and the sentence set aside. The accused has been in jail and there is no need for a retrial. He will be released forthwith unless he is otherwise being legally held.

Dated, signed and delivered at Kisii this 25th day of November, 2009.

A.O.MUCHELULE

JUDGE