



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO

Criminal Revision 9 of 2009

1. Criminal Law
2. Revision
3. Subject of the subordinate court case.

Traffic Law

Count I

- a) Permitting unlicensed driver to ride a motor cycle contrary to Section 30(2) of the Traffic Act Cap 402 Laws of Kenya.

- b) Particulars of offence

On the 9th November, 2009 at around 7.00a.m along Cheborgei – Litein road in Bureti District of the Rift Valley Province being the owner of unregistered motor cycle did permit unlicensed rider to ride the said motor cycle along the said public road.

Count II

Permitting unregistered motor cycle contrary to Section 12(2) of the Traffic Act Cap 403 Law of Kenya.

- c) Particulars of offence

On the 9th day of November, 2009 at around 7.00a.m along Cheborgei – Litein road in Bureti District of the Rift Valley Province being the owner of unregistered motor cycle did permit the said motor cycle while unregistered on the said public road

- d) Plea on both counts

IT IS TRUE

PLEA OF GUILTY convicted and sentenced three (3) months imprisonment.

Motor cycle detained till registered

Sentence to run consecutively.

4. Letter dated 17th November, 2009

- A) Seeking revision orders
 - i) Sentence excessive
 - ii) No facts
 - iii) No mitigations
 - iv) No fine option

5. **Held**

- a) Aden V R (1973)

- i) Procedure as to law not followed

Plea of guilty on both counts

Prosecution to outline facts of case

Accused to state if facts correct

Mitigation (*upon previous conviction given*)

Sentence of three (3) months imprisonment to run consecutively not permitted in law.

To always run concurrently

- ii) Traffic offence – a fine only is imposed for 1st offender and in default imprisonment.

6. Proceedings an illegality. Applicant set at liberty (*conviction quashed and sentence set aside*) unless otherwise lawfully held.

7. **Case Law**

Aden V R (1973) EA

8. **Advocate**

P. Ochieng advocate instructed by M/S P. Ochieng Ochieng & Co. advocates for the Applicant

NICKSON N. WAWERU APPLICANT

VERSUS

RULING

I: Procedure

1. The applicant, original accused in the subordinate courts at Sotik, wrote a letter through an advocate praying that his court case be called up by the High Court and be subjected to a revision under the criminal procedure code section.
2. No procedure is outlined save that the High Court may call up a file to note as to its illegality and procedure followed by the court below. In its supervisory powers the High Court may then Review the subordinate court file.

II: Background

3. In this revision file once a letter is written, the deputy registrar would cause a revision file to be opened and placed before the Hon. Judge. The Hon. Judge would make orders for the original file to be brought up from the courts below.
4. If the courts is unclear in some point may invite the advocate to address the court. In any event no parties is otherwise permitted to appear and the revision is determined exparte by the High Court judge.

II: Background

5. The applicant Nickson Njoroge was charged with two counts of a Traffic Offence.

Count I

Permitting unlicensed driver to ride a motor cycle contrary to Section 30(2) of the Traffic Act Cap 403 Laws of Kenya.

Particulars of offence

On the 9th November, 2009 at around 7.00a.m along Cheborgei – Litein road in Bureti District of the Rift Valley Province being the owner of unregistered motor cycle did permit unlicensed rider to ride the said motor cycle along the said public road.

Count II

Permitting [the] unregistered motor cycle contrary to Section 12(2) of the Traffic Act Cap 403 Laws of Kenya.

Particulars of offence

On the 9th day of November, 2009 at around 7.00a.m along Cheborgei – Litein road in Bureti District of the Rift Valley Province being the owner of unregistered motor cycle did permit the said motor cycle while unregistered on the said public road

6. What this meant is that the rider of the motor cycle and the motor cycle itself had no licence to be on the said road.
7. When the charges were read to the applicant original accused, he pleaded guilty to both counts. He expected to be fined but instead was sentenced to three months imprisonment without an option of a fine nor given the opportunity to mitigate before being sentenced.
8. He wrote a letter through his advocate for revision of his case.
9. When this court called up the file the only thing written on the file by the trial magistrate were the following words

“Accused Count 1 – It is true

Accused count 2 – It is true

Order – Plea of guilty entered and accused convicted. Accused to serve three months imprisonment.

Motor cycle not to be released until registration.

Sentences to run consecutively”

Principal Magistrate

10. The reasons for revision of this case mainly centered on sentence. Should a revision be allowed in this case?

III: Opinion

11. In the case law of **Aden V Republic (1973) EA** it outlines the procedure of taking a plea.
12. The substance of the charge and every element is stated by the court to the accused in a language he understands who on being asked if he admits or denies the truth of the charge would plead guilty or not guilty.
13. If a person pleads guilty, then the facts of the case and the circumstance thereon would be read to the accused. The accused would plead to those facts and state it is true as outlined or not true. If it is not true a plea of not guilty would be entered. If the facts as read are true then a plea of guilty is entered and the accused is convicted as charged of the offence.
14. The prosecution would provide the offenders previous conviction for the bureau of records of persons whether he has a previous offence or not.
15. Thereafter the offender would be requested to give his mitigation.
16. The court would then sentence the offender.
17. In this case this procedure was not followed therefore denying the accused his lawful rights to be heard in court.
18. On these grounds alone the plea taken was unequivocal.
19. As to sentence each count was three months imprisonment. The sentence was to run consecutively meaning the offender would serve a total of six months imprisonment instead of three months imprisonment.
20. It therefore trite law that where an offender commits an offence having several counts, that occurred on the same day and it's one them the sentence should run concurrently not consequentially.
21. The sentence imposed in this case was illegal. The Traffic Act under the concerned Sections in Count I require a fine to be paid. If a second offender requires a term of imprisonment in the second count the term is a fine in default imprisonment.
22. A sentence on non custodial sentence is provided for in Traffic matters. This should have been given.

23. I find the proceedings and sentence an illegality. The conviction is quashed and sentence set aside. The accused is set at liberty on both counts unless otherwise lawfully held.

DATED this 18th day of November, 2009 at KERICHO

M.A. ANG'AWA

JUDGE

Advocates

Patrick Ochieng advocate instructed by M/S P. Ochieng Ochieng & Co. advocates for the Applicant