



1. Criminal Law
2. Revision
3. Subject of main suit/case
 1. **Traffic Act Cap 405** Laws of Kenya
 2. **Nine counts**
 - (i) Carrying passengers without a class A insurance **Section 5 (b)**
 - (ii) Interfering with safe driving of vehicle **Section.59(2)** (*carried 4 passengers in front seat*).
 - (iii) Carrying passengers in a dangerous position **Section 61(1)** (*six passengers in an open boot*).
 - (iv) Carrying passengers in an uncomfortable manner rule 85 (*six passengers in the boot*).
 - (v) Operating a motor vehicle without PSV license section 95(1).
 - (vi) Operating PSV license without a driver’s uniform Section 119(1)
 - (vii) Failing to display driver’s photograph Rule 71
 - (viii) Failing to maintain parts and equipment contrary to 55(1)
 - (ix) Operating a motor vehicle as a PSV without inspection sticker contrary to **section 17A (i) b (3)**
4. Plea guilty as charged.
5. **Section 362** Revision of court under the Criminal Procedure Code.
 - (i) Powers of the High Court to satisfy itself of the correctness legality or propriety of any finding sentence or order recorded or passed as to the regularity of any proceeding of any such subordinate court.
 - (ii) Letter written on 2nd December 2009 received 2nd December 2009.
 - (iii) Plea equivocal inter-alia.
6. **Held**
Plea equivocal.
7. Case law
Aden v Rep. EALR [1973] pg 445
8. **Advocate**
Letter written by E.M. Orina & Co. advocate on behalf of Applicant.
(From original conviction and sentence of Sotik Resident Magistrate’s Court, Traffic Case No.490 of 2009 – S. R. ROTICH [Senior Resident Magistrate]).

NATHAN SANG..... APPLICANT
Original accused
VERSUS
 REPUBLIC.....RESPONDENT

RULING
Revision

1. Procedure

1. Through a letter of 2nd December 2009, the applicant applies that this court do call up the records of the subordinate court to satisfy itself of the correctness, legality or propriety of any finding sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate court (*Section 362 of the Criminal Procedure Code*).
2. Nathan Sang was arraigned before the Principal Magistrate’s Court at

Sotik on the 9th of November 2009 with nine (9) counts of offences under the Traffic Act Cap.403 Laws of Kenya. These offence are in summary;

- (i) *Carrying passengers without a class A license. Section5(b).*
- (ii) *Interfering with safe driving of vehicle. Section 59(2) (having carried 4 passengers in the front seat).*
- (iii) *Carrying passengers in a dangerous position. Section61(1) (six passengers in an open boot).*
- (iv) *Carrying passengers in an uncomfortable manner. Rule 85 (six passengers in a boot).*
- (v) *Operating a motor vehicle without a PSV license. Section. 95(1).*
- (vi) *Operating PSV License without a driver's uniform. Section 119(1).*
- (vii) *Failing to display drivers photograph Rule. 71.*
- (viii) *Failing to maintain parts and equipment contrary to section 55(1).*
- (ix) *Operating a motor vehicle as a PSV without inspection sticker contrary to section 17 A (1) b 3.*

3. The trial magistrate recorded the following proceedings in court. The coram, magistrate himself the prosecutor, the clerk and the accused. No language was indicated as having been recorded. The charge was read to the accused and he replied;

“Accused **Count 1**; It is true.
Count 2; It is true.
Count 3; It is true.
Count 4; It is true.
Count 5; It is true.
Count 6; It is true.
Count 7; It is true.
Count 8; It is true.
Count 9; It is true.

“**ORDER**; Plea of guilty entered.”

The actual words recorded was “ **P.G.E**” in abbreviation.

Prosecutor – Facts as per charge sheet.

Accused - Facts are correct

Order; Accused convicted on own plea. Accused to serve six (6)months imprisonment. Right of appeal fourteen (14) days.

4. The applicant filed an appeal to court at the High Court at Kericho. He withdrew it and filed this application address to court (ideally to be to the Registrar) by his advocate.

II. Opinion.

5. The case law of **Aden v Rep. EALR [1973] pg 445** clearly brings out the facts that magistrates and judges are not permitted to take pleas in the above manner stated.
6. The substance of the charge and every element thereof must be stated by the court to the accused person in a language that he understands who on being asked whether he admits or denies the truth of the charge would then plead guilty or not guilty.
7. A summary of offence in each count is to be read to the accused who again would be asked to plead to the offence or offences. If he maintains a plea of guilty, the prosecution would produce the previous conviction. If he then admits to the previous conviction, the offender would be asked to mitigate. What does he wish to say in mitigation to the offence?
8. The trial magistrate in this case did not ask the offender to mitigate.
9. When it came to sentencing it was recorded, accused to serve 6 months imprisonment. Now there were nine counts. Which of the nine counts did the six (6) months imprisonment apply to? Where there are several counts under the Traffic Act and even under the Criminal Penal Code, several sentences should normally run concurrently as the offence was as a result of one transaction.

10. In traffic cases, great care should be taken as the offence would normally carry the sentence on the offence of a fine for 1st offender, then for a second offender a term of imprisonment not exceeding three (3) months etc. It therefore is important that each count must have the appropriate sentence according to law.
11. Nonetheless, an accused would not be permitted to be charged with many counts as this would be an embarrassment for him.
12. This application must succeed. The correctness, legality and propriety of the procedure followed by the trial magistrate is wanting.
13. This conviction is quashed, sentence is set aside. The appellant is at liberty unless otherwise lawfully held.

DATED this 3rd day of December 2009, at **KERICHO**

M. A. ANG'AWA

JUDGE

Advocate

Letter written by E.M. Orina & Co. advocate on behalf of Applicant.