



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Criminal Revision 33 of 2008**

**MARTIN MUSYOKA MATILU.....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

***(From the original conviction and sentence in Traffic Case No. 2384 of 2008 of the Chief Magistrate's Court at Nairobi by Mr E.C. Cheron - SRM)***

**RULING**

The applicant's counsel M/s Kingoo Wanjau wrote a letter dated 25<sup>th</sup> April, 2008 seeking that the court revises proceedings in Traffic Case No. 2384 of 2008 (skeleton) and set aside the conviction therein and also order that Traffic Case 5239 OF 2008 be withdrawn.

The letter was accepted by an affidavit sworn by applicant's counsel in which she stated that on 26<sup>th</sup> February, 2008 the appellant was supposed to appear in court in Traffic Case No. 2384 of 2008 for plea but due to reasons beyond his control, he failed to attend and a warrant of arrest was issued.

On 11<sup>th</sup> March, 2008, the applicant appeared in person before Hon. K. Bidali – Senior Resident Magistrate for plea and he was fined Kshs 3,500/- in respect of count 1 and Kshs 500/- in respect of count 2. He paid the fine and was released. On 9<sup>th</sup> April, 2008 applicant was arrested on the strength of a warrant of arrest issued on 26<sup>th</sup> February, 2008 in Traffic Case 2384 of 2008. What happened is that on 9<sup>th</sup> April, 2008 the appellant was arraigned in court and the original file could not be found (obviously because it had been finalized) and a skeleton file was opened and applicant's plea was taken afresh by Hon. Cheron and applicant was fined Kshs 30,000/- in count 1 and Kshs 1,000/- in count 2 in default to serve six months imprisonment. On the same 9<sup>th</sup> April, 2008 applicant was also charged in Traffic Case 5239 of 2008 with failing to appear for plea on 26<sup>th</sup> February, 2008 in Traffic 2384 of 2008 – he denied the charge was released on cash bail of Kshs 5,000/-. Applicant was unable to raise the fine of Kshs 30,000/- and Kshs 1,000/- nor the cash bail and is now serving the six months sentence. This is the basis of the application that the sentence involving Kshs 30,000/- and 1,000/- by Mr Chereono be quashed as applicant was charged and punished twice for the same offence.

Secondly, that Traffic Case 5239 of 2008 be withdrawn. I have perused the original Traffic file 2384 of 2008 when the matter came up for plea on 26<sup>th</sup> February, 2008 appellant was absent and warrant of arrest was issued and the matter was set for mention for 12<sup>th</sup> March 2008. However on 11<sup>th</sup> March, 2008, the applicant appeared in court and pleaded guilty to both counts and was fined Kshs 3,500/- in default 1 month imprisonment on count 1 and Kshs 500/- in default 7 days imprisonment on count 2.

The learned magistrate did not address the fate of the warrant of arrest so that it remained in force inspite of the sentence. That is how the skeleton file Traffic 2384/08 got to be opened on 9<sup>th</sup> April, 2008 and applicant charged for the same offences,

convicted and fined. Clearly this was an error which may have been as a result of the court's very bush schedule and the fact that Mr Cheron who was now dealing with the skeleton file had not previously dealt with the applicant and so had no way of knowing that he had already been punished. Further the fact that the trial court did not address the question of the warrant of arrest. The applicant thus now faced

another charge of failing to attend court contrary to section 116(2) of the Traffic Act – I think this is all as a result of the omission by Hon. Bidali to address applicant's non attendance on 26<sup>th</sup> February, 2008 when applicant duly appeared before him. I think applicant has sufficiently paid for that non attendance which in any event would not even attract a sentence beyond six months and I think holding him much longer in custody for failing to meet bond terms is unjust.

I therefore make orders as follows:-

- 1. The conviction and in the second file Traffic 2384/08 skeleton is quashed and the sentence is set aside.***
- 2. The non appearance of appellant on 26<sup>th</sup> February, 2008 ought to have been addressed by the learned trial magistrate then, he did not – let the applicant be released on his personal bond of Kshs 2,000/- to appear before the trial magistrate on 24<sup>th</sup> June, 2008 so that he can be given a date for hearing of the charge of failing to attend court.***
- 3. Applicant shall be released forthwith unless otherwise lawfully held.***

Delivered and dated this 28<sup>th</sup> day of May, 2008 at Nairobi.

**H.A. OMONDI**

**JUDGE.**