



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

Criminal Revision 29 of 2008

ROBERT WAHOME.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(From the original conviction and sentence in Traffic Case No. 5144 of 2008 of the Chief Magistrate's Court at Nairobi by

E.C. Cheronu – SRM)

RULING

By a letter dated 10th April, 2008 Robert Wahome requested this court under the provisions of Section 362 Criminal Procedure Code, to call for the lower court's record for the purpose of ascertaining itself as to the legality, property, correctness and regularity of the proceedings and sentence in **Traffic Case 5144 of 2008 being Republic versus Robert Wahome** with a view of making appropriate orders to meet the ends of justice as the original conviction was excessive and too harsh. (I suspect the intended position is that the sentence was too harsh and excessive).

The applicant in the Traffic Case was charged with the offence of allowing to carry excess passengers contrary to section 100(2) of the Traffic Act and fined Kshs 20,000/- in default six months imprisonment.

Applicant pleaded guilty to the charge. He carried the excess at 8.00a.m. along Lusaka Road within Nairobi area being 15 instead of 14. From the lower court record it is shown that the appellant appeared before Hon. K. Bidali on 8th April, 2008 and upon the charge being read to him he pleaded guilty.

There is nothing recorded with effect to his plea in mitigation, but the learned trial magistrate proceeded to sentence him to a fine of Kshs 20,000/- with a default sentence of six(6) months imprisonment.

Under the provisions of the Traffic Act Section 100(2):-

“If any public service vehicle carries more persons, baggage or goods than it is licensed to carry, the driver, the conductor and the owner of such vehicle shall each be guilty of an offence and liable to a fine not exceeding twenty thousand shillings.

So that Kshs 20,000/- is the maximum penalty. There is also nothing from the record to show whether the applicant was a first offender or a repeat offender to warrant a maximum fine of Kshs 20,000/- for carrying one excess passenger.

Certainly the learned trial magistrate had the discretion to punish for the offence as recognized by the law. yet this discretion must be considered in the light of the circumstances of the offence and the gravity thereof. If the applicant's mitigation had been considered, perhaps this would have had a bearing on the sentence. In failing to give the applicant a chance to mitigate, and proceeding to impose a maximum sentence, then there was no rationale for that kind of sentence and to that extent the record was improper.

Given that this one excess passenger was carried in the motor vehicle at 8.00a.m. within Nairobi's busy Lusaka Road, would compel the trial magistrate to establish the circumstances of the case and principles in sentencing – I do not think sentence is intended to be unreasonably harsh and premature without considering the general circumstances surrounding the commission of the offence. Under the circumstances it is my considered view that this sentence was manifestly harsh and:-

(a) I hereby set it aside and do substitute the same to a fine of Kshs 2,000/- in default to serve one (count 1) month imprisonment.

(b) The balance of the money if it had been paid should be refunded to the applicant.

(c) If the applicant is serving sentence and has not completed then he is to be set at liberty forthwith unless otherwise lawfully held.

Delivered and dated this 14th May, 2008 at Nairobi.

H.A. OMONDI

JUDGE.

14TH MAY, 2008