



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**(CORAM: OJWANG, J.)**

**CRIMINAL REVISION NO. 56 OF 2008**

**WILLIAM MUGO GITHINJI..... APPLICANT**

**-AND-**

**REPUBLIC.....RESPONDENT**

**RULING ON REVISION**

The applicant, through his advocates, came before this Court by letter dated 1<sup>st</sup> July, 2008 seeking the exercise of the Court's revision jurisdiction under ss.362 and 364 of the Criminal Procedure Code (Cap.75, Laws of Kenya).

His Honour **Mr. E.C. Cheron**, Senior Resident Magistrate had sent the applicant to jail for one month, without option of a fine, for not promptly reporting a motor vehicle accident. The learned Magistrate dispensed this rather harsh sentence because the applicant did not promptly report the accident to the Police, as required by s.73(3) of the Traffic Act (Cap.403, Laws of Kenya).

This was a case in which a young man, just out of school, was driving a family car, and the accident in which he was involved is clearly described in the statement of facts given in Court after he readily pleaded guilty.

On 3<sup>rd</sup> March, 2008 the applicant was driving his father's car, Toyota Prado, KBA 621B, along Thika Road. He hit a pot-hole on the road, lost control of the motor vehicle, and landed in a ditch, in what was described as "a self-involving accident." He was able to steady himself, and to drive the motor vehicle successfully, back to his father.

In the charge, it was stated that the applicant had not reported the accident to the Police within 24 hours as required by law. It was the owner of the motor vehicle who, after noticing a defect in the machine, caused the applicant to go to the Police, and make a report. As soon as he reported, the applicant was arrested and charged.

This Court has been informed that the applicant has now been in jail for just over a week; and that his failure to mitigate his wrong-dong was the main reason leading to the severity of sentence. He was a first offender.

I find and hold, by virtue of the Court's revision jurisdiction, that the sentence imposed on the applicant

was not in accordance with the law. Once the fact is clear, as is uncontested, that the source of the mischief was the pot-hole (for which the Ministry of Roads is squarely responsible, and in respect of which there is a public duty of effecting repair, resting upon that Ministry), then the applicant cannot, in law, be penalised, when it has not been shown that he was in any way negligent or careless. It is moreover, not stated that the motor vehicle after hitting the pot-hole, lost control in circumstances of carelessness, and injured anyone at all. To his credit, the applicant steadied the motor vehicle, and responsibly drove it away to its proper custody.

I find that there is no wrong on the part of the applicant, and he should have been acquitted outright.

I therefore quash the sentence imposed by the Subordinate Court, and order that the applicant shall forthwith be set at liberty, unless he is otherwise lawfully held.

***Orders accordingly.***

**DATED and DELIVERED** at Nairobi this 7<sup>th</sup> day of July, 2008.

**J.B. OJWANG**

**JUDGE**

**Coram: Ojwang, J.**

**Court Clerk: Huka**

For the Applicant: Mr. Nyakundi

**For the Respondent: Mr. Makura**