

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Misc Crim Appli 111 of 2008

PATRICK MWANDIKWA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

PATRICK MWANDIKWA, the applicant was, upon his own plea of guilty to charge of driving unroadworthy motor vehicle on a public road contrary to Section 55(1) as read with Section 58(1) of the Traffic Act, convicted and sentenced to fine of Kshs.150,000/-. He has appealed against both that conviction and sentence. Before the appeal can be heard he has applied under Sections 365 and 357 of the **Criminal Procedure Code** to be granted bail pending appeal.

When the matter came before me this morning, Mr. Njuguna for the applicant, instead of arguing the application urged me to review the sentence and set it aside on the ground that the sentence of Kshs.150,000/- meted to the applicant is illegal. He said that **Section 58(1)** of the **Traffic Act** under which the applicant was charged provides for a maximum sentence of Kshs.20,000/-. Mr. Mugambi for the state concurred with that view.

I have perused the provisions of **Section 58(1)** of the **Traffic Act** and noted that both counsel were labouring under the old provisions of that Section which provided for a maximum sentence of Kshs.20,000/-. The new provisions of that section provide for a sentence of upto Kshs.400,000/-. So I cannot review the sentence as submitted by counsel.

However, upon perusal of the proceedings I have noted that the applicant's plea was not properly taken. When the facts were read out to him he was not asked to admit or deny them. His purported plea of guilty cannot therefore be said to have been unequivocal. As this clear on the court record which is before me there is no point of allowing the applicant to take us through the rigmarole of an appeal. It will be at the end of the day be allowed on that ground. In the circumstances and pursuant to the revisionary powers conferred upon me by **Section 362** of the **Criminal Procedure Code** I hereby quash the conviction and set aside the sentence. If the applicant has paid the fine the same should be refunded to him forthwith. If however, he is in prison he shall be set free forthwith unless otherwise lawfully held.

DATED and delivered at Nakuru this 18th day of December, 2008.

D. K. MARAGA

JUDGE