

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA

CRIMINAL APPEAL NO. 81 OF 2005

FRANCIS KARAMAAPPELLANT

VERSUS

REPUBLICRESPONDENT

J U D G M E N T

This is an appeal against the decision of the subordinate court to sentence the appellant to a fine of Kshs.20,000/-. This appellant is claiming that the same is harsh and excessive excessive in view of the fact that he was a first offender. The state concedes to this appeal.

An appellate court will not always interfere with a trial court's discretion as to sentence unless it is shown that the subordinate court did not consider material factors or it considered immaterial factors or that the sentence is manifestly excessive. In this case it is clear that the appellant was a first offender and that he gave mitigation to the effect that he committed the offence while assisting some women who were sick to Coast Provincial General Hospital.

The trial magistrate notes that she took into account the appellant's mitigation. She however does not indicate whether she took into account the fact that the appellant was a first offender. In view of this failure, this court is entitled to interfere with the sentence. Section 100(2) of the Traffic Act is clear that an offence of this kind attracts a maximum fine of Kshs.20,000/-. It was wrong for the trial court to sentence the appellant to the maximum fine whereas he was a first offender. That was harsh and excessive. I am satisfied that the learned senior state counsel correctly conceded to this appeal. In the end I allow the appeal by setting aside the sentence slapped by the subordinate court and substituting it with a sentence of a fine of Kshs.5,000/- and in default to serve 6 months imprisonment from the date of sentence. Since the appellant has been in prison for the last 10 months, he should be released forthwith unless held for other lawful purposes.

Dated and delivered this 27th day of February 2006.

J.K. SERGON

J U D G E

In the presence of :

Accused in person

Mr. Ademba for the state