



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Wanyoike (Criminal Revision E301 of 2023)
[2025] KEHC 13113 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 13113 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E301 OF 2023
DO CHEPKWONY, J
MARCH 28, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

SIMON MUNGAI WANYOIKE ACCUSED

RULING

1. The prosecution filed the present application for Revision on 18th May, 2023 seeking the following orders:-
 - a. Spent.
 - b. That the Honourable Court in exercise of its supervisory powers calls for Subordinate Court file in Gatundu SPMC No. MCTR Case No. E171 of 2023 R v Simon Mungai Wanyoike in order to examine and to satisfy itself as to the correctness, legality and propriety of the order issued on 23rd March, 2023 discharging the Respondent under Section 89 (5) of the Penal Code, a non-existent section in Kenyan Penal Code.
 - c. That this Honourable Court having satisfied itself on the correctness, illegality and inappropriateness of the order issued on 23rd March, 2023 discharging the Respondent under Section 89 (5) of the Penal Code, a non-existent section in Kenyan Penal Code in Gatundu SPMC No. MCTR Case No. E171 of 2023 R v Simon Mungai Wanyoike, proceeds to set aside the order and in its place order that the charge registered against the Respondent be reinstated and the Respondent do appear before a Magistrate at Gatundu Law Courts other than Hon. W. Ngumi SRM for plea and trial on the charge in MCTR Case No. E171/2023, R v Simon Mungai Wanyoike.
2. It is the Prosecution's case holds that the Respondent herein was charged with the offence of Evading Weighbridge Contrary to Section 20 (1) (a) as read with Section 21 (1) of the East Africa Community



Vehicle Load Control Board Act, 2016 to which he pleaded guilty and was convicted for the same on 23rd March, 2023 by the trial Magistrate Hon. W. Ngumi. In his mitigation, the Respondent produced a logbook of the subject motor vehicle which showed that it has a tare weight of 3.3 tonnes and was thus not obligated to enter the weighbridge. According to the Prosecution, the trial Court confirmed the said tare weight indicated in the log book and proceeded to discharge the Respondent under Section 89 (5) of the Penal Code, which is a non-existent provision of law.

3. The Prosecution argues that the trial Court erred in failing to consider that under Section 8 of the East Africa Community Vehicle Load Control Act, 2016, clear provisions of the minimum weight of 3.5 tonnes of the gross weight have been set out and not the tare weight. That therefore, if the tare weight was 3.3 tonnes, then the weight of the body and load would definitely be more than 200 kg to make the minimum gross weight of 3.5 tonnes, which would then make it mandatory for the vehicle to pass through the weigh bridge even if it is not loaded. The Prosecution holds that since the Respondent pleaded guilty to the offence and thus the only option for the trial Court was to record a plea of not guilty and set the matter for hearing. But instead, the trial Court applied a non-existent law.
4. For those reasons, the Prosecution contends that there is need for this Court to exercise its supervisory powers and call for the record and examine it, so as to satisfy itself on the correctness, propriety and legality of the sentence passed against the Respondent and it would be in the interest of justice that the same be allowed.
5. The Respondent opposed the application for Revision vide Grounds of Opposition dated 27th November, 2023. It is the Respondent's position:-
 - a. That this application for Revision is a disguised appeal.
 - b. That the Revision application does not disclose a reasonable cause of action. It merely seeks to split hairs on typographical error.
 - c. That the prosecution is estopped by conduct from seeking a revision.
 - d. That revision will occasion the Respondent prejudice and visit double jeopardy and unwarranted personal expense on the Respondent.
 - e. That the application is an abuse of the court process.
6. The Respondent filed submissions dated 27th November, 2023 in which he admits pleading guilty to the offence and when invited to mitigate before sentencing, the trial Court exercised its discretion and discharged him under Section 89 (5) of the Criminal Procedure Code which allows the court to discharge an offender if it is of the opinion that the charge does not disclose an offence.
7. In submissions, the Respondent has urged that the revision is a disguised appeal without any cause of action and is only splitting hairs, hence the Prosecution is estopped by conduct from pursuing the Revision. He avers that the Respondent stands to suffer jeopardy with a likelihood of incurring further unnecessary and unwarranted expense, thus seeks the application to be dismissed.

Analysis and Determination

8. In determining the Applicant's application, this Court has read through the Revision application, the Grounds of Opposition and the Respondent's submissions alongside the record of proceedings before the trial Court. According to this Court, the power to determine an application of this nature is made in exercise of the supervisory jurisdiction of the High Court in criminal cases as provided for under Sections 362 to 366 of the Criminal Procedure Code which arise from the provisions under Article 165(6) and (7) of *the Constitution*.



9. Article 165(6) and (7) of *the Constitution* provides that:-

165. [6]The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

10. Section 362 provides that:-

[362]. The High Court may call for and examine therecord of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court”

11. Section 364 states as follows:-

[364]. Powers of High Court on revision (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;

(b) in the case of any other order other than an order of acquittal, alter or reverse the order.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

(3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.

(4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.

(5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”

12. Having read through the record of proceedings before the trial Court, this Court notes that on 23rd March, 2023 when the charges were read out to the accused/Applicant before the trial Court, the Respondent/Accused person pleaded ‘Guilty’ and a plea of guilt was entered and he was accordingly convicted for the offence he had been charged with. In mitigation, the Respondent said that his vehicle is an ISUZU NPR but he did not know that he was supposed to use the weighbridge. He sought for



forgiveness and stated that his vehicle was weighed at 3.3 tonnes in weight and he did not know that he was required to use the weighbridge.

13. The court also notes that from the state counsel's submissions to the court, it was confirmed that the accused had produced a log book showing that the motor vehicle is 3.3 tonnes and not 3.5 tonnes and thus urged the court to exercise its discretion.
14. It is worth-noting that the trial Court indicated that indeed the law requires that a motor vehicle be subjected to a weigh bridge if it weighs 3.5 tonnes or above. Therefore, since the logbook of the motor vehicle indicates that the tonnage is below the required weight, then no offence was disclosed and the trial Court then proceeded to discharge the Applicant under Section 89 (5) of the Criminal Procedure Code.
15. In establishing whether the trial court was justified in its action and or decision, the tare weight and gross weight which are in contention, ought to be distinguished. According to Section 8 (1) of the East African Community Vehicle Load Control Act, 2013, states that:-

“A Transporter operating a vehicle of a gross vehicle weight of 3500 kilogrammes or more shall present such vehicle to be weighed at every weighing station that is situated along the Regional Trunk Road Network traversed by such vehicle or that is designated for this purpose by a national roads authority”

16. The *Traffic Act* defines “Tare weight” as ‘the weight of a vehicle when unladen, inclusive of the weight of the body and all parts (the heavier being taken when alternative bodies or parts are used) which are necessary to or ordinarily used with the vehicle when used on the road”.
17. The East African Community Vehicle Load Control Act, defines “gross weight” as “the maximum permissible weight of such vehicle and its load under the Act”.
18. Looking at the log book of the motor vehicle in question, this Court finds that the gross weight indicated therein is 9900 whereas the tare weight is 3300.0. The Prosecution is therefore correct in stating that the trial Court ought to have considered the gross weight of the motor vehicle and not the tare weight of the said motor vehicle. For that reasons, the Court finds that the trial court erred in finding that there was no offence and proceeds to allow the Revision and make the following orders:-
 - a. That this Honourable Court hereby and therefore finds that the orders of the trial court issued on 23rd March, 2023 discharging the Respondent under Section 89 (5) of the Penal Code are based on a non-existent provision in the Laws of Kenyan in Gatundu SPMC No. MCTR Case No. E171 of 2023 R v Simon Mungai Wanyoike and thus is inappropriate.
 - b. The court hereby sets aside the said order of the trial Court issued on 23rd March, 2023 and in its place orders that the charge registered against the Respondent be reinstated.
 - c. Subsequently, the Respondent is hereby ordered to appear before the Magistrate at Gatundu Law Courts who will then direct the matter to be placed before another Magistrate other than Hon. W. Ngumi SRM for plea and trial on the charge in MCTR Case No. E171/2023 R v Simon Mungai Wanyoike on a date that will be directed by the Deputy Registrar.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 28TH DAY OF MARCH 2025.

D. O. CHEPKWONY



JUDGE

In the presence of:

M/S Wairimu holding brief for Mr. Kabugu counsel for the Respondent

Mr. Mageru holding brief for Applicant

Court Assistant - Martin

