



**Odhiambo v Republic (Criminal Revision E006 of 2025)  
[2025] KEHC 6710 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6710 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL REVISION E006 OF 2025  
GL NZIOKA, J  
MAY 20, 2025**

**BETWEEN**

**ELIAS ODHIAMBO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By a chamber summons dated 14<sup>th</sup> February 2025 brought under the provisions of sections 362 and 364 of the [Criminal Procedure Code](#) (Cap 75) Laws of Kenya, the applicant is seeking for the following orders: -
  - a. That this court be pleased to review the sentence issued against the applicant in Traffic Case No. E147 of 2025 of the Chief Magistrate’s Court at Naivasha;
  - b. That pending hearing and determination of the application, the court be pleased to release the applicant on reasonable bond and/or cash bail terms;
  - c. Costs of the application be provided for.
2. The application is based on the grounds thereto and affidavit of even date sworn by the applicant. He avers that, on the 12<sup>th</sup> February 2025, he was charged vide Traffic Case No. E147 of 2025 at the Chief Magistrate’s Court, Naivasha, with an offence of driving a laden motor vehicle on public road with a load greater than the load specified contrary to section 56(1) as read with Section 58(1) of the [Traffic Act](#), Cap 403 Laws of Kenya.
3. That he pleaded guilty to the charge and was fined a sum of Kshs 81,000 with an alternative imprisonment of one (1) year. That the fine or sentence imposed by the court is contrary to the Axle Load Control Limits.



4. Consequently, it is only fair that this Honourable Court exercises its jurisdiction and revise the said sentence in line with Axle Load Control Limits & Fines Schedule under the Kenya National Highway Authority.
5. However, the application was opposed vide a replying affidavit dated 24<sup>th</sup> February 2025 sworn by Shirley Chepkonga an Advocate of the High Court of Kenya and Principal Prosecution Counsel, prosecuting this matter.
6. She avers that the respondent indeed confirms that the applicant was arraigned before court on 12<sup>th</sup> of February 2025 vide Naivasha Chief Magistrates Court Traffic Case No. E147 of 2025 and charged inter alia with the offence of driving a laden motor vehicle on public road with a load greater than the load specified contrary to section 56(1) as read with section 58(1) of the Traffic Act (Cap 403) Laws of Kenya.
7. That the charge was read to him in a language he understood and he pleaded guilty, subsequently a plea of guilty was entered. Further the particulars of the charge were read to him and the weight ticket produced as exhibit 1 and he confirmed the facts to be true and the trial court proceeded to convict him on his own plea of guilty and sentenced him to pay a fine of Kshs 80,000 in default to serve one (1) year imprisonment.
8. That section 58(1) of the Traffic Act (Cap 403) Laws of Kenya states that any person who drives or uses on a road a vehicle in contravention of the provisions of section 55 or section 56 shall be guilty of an offence and liable to a fine not exceeding 400,000. or to imprisonment for a term not exceeding two (2) years or to both.
9. That the applicant was not charged under Rule 41(2) of the Traffic Rules and therefore the annexed KENHA Axle Load Control Limits and Fines marked “E02” is not applicable in the instant matter.
10. The respondent deposed that before the applicant was sentenced he was accorded an opportunity to offer mitigation which he did and the learned trial Magistrate took it into consideration before the sentence was meted on the applicant.
11. The respondent averred that the sentence meted out by the learned trial Magistrate was proper, regular and lawful as he was ordered to pay a fine of Kshs 80,000 in default to serve one (1)- year imprisonment. That it was not only lenient but also within the limits prescribed by law.
12. Further sentencing is at the discretion of the trial court, which discretion is guided inter alia by the facts of the case and the prescribed punishment under law.
13. That section 362 of the Criminal Procedure Code clearly stipulates that the High Court shall exercise its powers of revision for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded and as to the regularity of the proceedings of any such subordinate court.
14. The respondent argued that the applicant has not demonstrated that the sentence meted out on him was illegal to warrant this Honourable Court to interfere with the same. That the application lacks merit and should therefore be dismissed forthwith.
15. The matter was argued before this court orally with parties merely reiterated the averments in their respective affidavits.
16. I have considered the same and I note that from the charge sheet the applicant was charged with an offence under section 56(1) as read with section 58 of the Traffic Act. The offence is stated to be “driving



a laden motor vehicle on a public road with a load greater than load specified contrary to section 56(1) of the *Traffic Act*.”

17. The subject provisions of section 56(1) states as follows: -

“(1) No vehicle shall be used on a road with a load greater than the load specified by the manufacturer of the chassis of the vehicle or than the load capacity determined by an inspector under this Act”.

18. The question is, does this section create any offence? In my considered opinion it does and indeed that is the offence the applicant was charged with and pleaded guilty thereto. The applicant is not alleging that he was charged under a nonexistence law or with nonexistence offence. In any case, if that was the case he should have pleaded not guilty to the charge.

19. Be that as it were, the revision application is on sentence and in that regard the relevant sentence for the offence the applicant was charged with is section 58 of the Act that states as follows:

“

“(1) Any person who drives or uses on a road a vehicle in contravention of the provisions of section 55 or section 56 shall be guilty of an offence and liable to a fine not exceeding four hundred thousand or to imprisonment for a term not exceeding two years or to both:

Provided that rules under this Act may provide that a person who is guilty of an offence under section 55 or 56 shall be liable to pay a fine according to a prescribed scale, and different scales may be prescribed for first offenders, and for second or subsequent offenders, within a prescribed period, but so that no person shall thereby be liable to pay a fine greater than the maximum provided by this subsection; and for the avoidance of doubt it is declared that liability of a person to pay a fine on a prescribed scale shall not affect that person’s liability to imprisonment under this subsection as an alternative to, in addition to, or in default of, the payment of a fine.

20. It is clear that based on the provisions afore the sentence imposed is not unlawful, improper, irregular and/or illegal.

21. However, the prosecution decided not to invoke the provisions under the Rules when they drafted the charge, in fact the charge sheet reads in part “greater load than specified” but does not state specified where, whether in the Rules or elsewhere. Whether that omission was intentional or inadvertently is not clear.

22. Even then the sentence under the Rules is not mandatory as the term used in the proviso is; “may” and the intention was to seal the maximum sentence under section 58. Further a reading of the proviso clearly reveals the sentence under the statute is not subordinate to that under the Rules. This is so as an accused can still be sentenced to imprisonment on default of paying a fine imposed under the rules.

23. Pursuant to the aforesaid I find that the application has no merit and I dismiss it accordingly.

24. It is so ordered

**DATED, DELIVERED AND SIGNED ON THIS 20<sup>TH</sup> DAY OF MAY 2025**

**GRACE L. NZIOKA**

**JUDGE**



In the presence of:

Mr. Opar for the applicant

Ms. Chepkonga for the respondent

N/A by the applicant

Ms. Hannah: court assistant

