



REPUBLIC OF KENYA



**Shikoli v Republic (Criminal Revision E003 of 2024)
[2024] KEHC 931 (KLR) (7 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 931 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E003 OF 2024
RN NYAKUNDI, J
FEBRUARY 7, 2024**

BETWEEN

THOMAS MMBOYI SHIKOLI APPLICANT

AND

REPUBLIC RESPONDENT

(Being a review on the sentence in Traffic case. No. E781 OF 2023 before Hon. D. Mikoyan (CM))

RULING

Representation:

Mr. Mugun for State

1. Pleaded guilty, convicted and sentenced to count II for the offence of carrying excess passengers contrary to section 100 (2) of the Traffic Act cap 403 laws of Kenya. In brief on the 5th day of December, 2023 at about 0740 hrs at Sagala area along Eldoret – Kapsabet road in Kapsabet sub county within Uasin Gishu County you being the driver of motor vehicle registration number KBD 500P make Isuzu Bus Belonged to 20 Minibus Sacco did carry 67 passengers instead of 51 passengers hence 16 excess. As for the 1st count learned trial magistrate discharged the applicant under section 35 of the CPC.
2. In the instant application it is grounded in the matter of article 165 of the Constitution of Kenya of Kenya (2010 sections 362 & 364 of the Criminal Procedure Code the Limitation of Actions Act 22. In the certificate of urgency filed in court on January 22, 2024 accompanied with an affidavit the applicant deposes as follows;
 1. That the applicant is a man of straw with no means of permanent income.
 2. That at the time of his arrest and detainment in court, he was arrested as the driver of motor vehicle KBD 500P.



3. That the owner of the subject vehicle was never charged or brought before the court to be preferred the said charges.
 4. That since the applicant's incarceration at Eldorets Maximum prison in service of the one-year sentence in default of paying the fine, the owner of the subject vehicle has taken his car and assigned another driver and left the applicant to suffer in prison.
 5. That the applicant has suffered in prison and learnt his lesson.
 6. That the applicant's family have suffered both mental and psychological torture since he was the sole provider of the family.
 7. That the applicant is remorseful and prays for leniency in this court.
 8. That the applicant now presents the following documents for the courts consideration in making the orders sought above.
3. It is settled in our jurisdiction that revision is not an alternative to appeal and should never be taken as alternative to appeal. An aggrieved party cannot simply choose to invoke revisional powers of this court where there is a right to appeal. The revisional power conferred upon the High court under art.165 (6) (7) of the Constitution and section 362 & 364 of the CPC is to examine the legality, or propriety, correctness, regularity and justness of the order under revision and that would clearly justify the examination of the record to make a finding as to its legality, propriety or regularity as arrived at by the court below. The language of the Constitution is indeed wide but one must attach some significance to the expressions and words as employed by the Criminal Procedure Code.
 4. As far as the present grievance is concerned I find no error of law or fact on the face of the record or any such evidence that the decision if allowed to stand would occasion a miscarriage of justice. Revisional power is not and cannot be equated with the power of reconsideration of all questions or fact as a court of first appeal. Having summarized the affidavit evidence and concerns raised by applicant primarily no grounds exists to interfere with the decision of the trial court save that invoking section 28 of the Penal Code the default sentence of 12 months be reviewed and substituted with 6 months period.
 5. Orders accordingly.

DATED SIGNED AND DELIVERED THIS 7TH DAY OF FEBRUARY, 2024.

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R. NYAKUNDI
JUDGE

