



**Gamadid v Republic (Miscellaneous Criminal Application
E025 of 2023) [2024] KEHC 2965 (KLR) (8 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2965 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E025 OF 2023**

JN ONYIEGO, J

MARCH 8, 2024

BETWEEN

SALADH MAHAD GAMADID APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was charged with two counts in relation to traffic offences. Count one, he was charged with the offence of causing death by dangerous riding contrary to section 46 of Traffic Act Cap 403 Laws of Kenya. Particulars of the offence were that on the 12th day of November, 2022 at about 1830hrs along Garissa – Mwingi road within Corner Punda area of Tana River County, being the rider of an unknown motorcycle, rode the said motorcycle on the said public road without due care and attention to other road users in the manner which was dangerous to the public having regards to all circumstances of the case including the nature, condition and use of the road and the amount of the traffic which was actually at the time or which might reasonably be expected to be on the road, knocked down one female pedestrian namely Fatuma Mohamed who died while undergoing treatment.
2. Count two, he was faced with Riding a motorcycle on a public road without a driving licence contrary to section 103B (5) as read with section 103B (7) of the Traffic Act Cap 403 Laws of Kenya. Particulars were that on the 12th day of November, 2022 at about 1830hrs along Garissa – Mwingi road within Corner Punda area of Tana River County, being the rider of an unknown motorcycle, did ride the said motorcycle along the said public road without valid driving license.
3. When the charges were read to the applicant, he pleaded not guilty at the first instance but later changed his plea to that of guilty. He was subsequently convicted and sentenced to serve five years’ imprisonment in respect of count one and a fine of Kes. 5,000/- in default to serve six months’ imprisonment respect of count two.



4. The applicant has approached this court through what is referred to as humble mitigation seeking leniency on grounds that his family is suffering as a result of his incarceration; time spent in custody be considered; the court to find that the sentence was excessive and that he has since reformed. Mr. Kihara, counsel for the respondent opposed the application stating that the same was devoid of merit and that the sentence meted out was sufficient in the given circumstances.

5. I have considered the application and rival submissions by the parties herein. Revisionary jurisdiction of this court is donated by Section 362 of the [Criminal Procedure Code](#) (CPC) which provides as follows:

The High Court may call for and examine the record 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.

6. In the Malaysian case of *Public Prosecutor v Mubari bin Mohd Jani and Another* [1996] 4 LRC 728 at 734, 735, the court rendered itself thus:

“...The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice...If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion... This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case.”

7. Equally, Article 165 (6) and (7) of the [constitution](#) does confer supervisory powers to the high court over subordinate courts to the extent that it may call for any record of any proceedings before any subordinate court or person, body or authority and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

8. From the application, counsel is basically challenging the length of the sentence imposed and therefore seeks its review downwards.

9. Section 46 of the [Traffic Act](#) provides as follows:

Any person who causes the death of another by driving a motor vehicle on a road recklessly or at a speed or in a manner which is dangerous to the public, or by leaving any vehicle on a road in such a position or manner or in such a condition as to be dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road and the amount of traffic which is actually at the time or which might reasonably be expected to be on the road, shall be guilty of an offence whether or not the requirements of section 50 have been satisfied as regards that offence and liable to imprisonment for a term not exceeding ten years and the court shall exercise the power conferred by Part VIII of cancelling any driving licence or provisional driving licence held by the offender and declaring the offender disqualified for holding or obtaining a driving licence for a period of three years starting from the date of conviction or the end of any prison sentence imposed under this section, whichever is the later.



10. In regards to Count II, the penalty is provided for under section 103B (7) of the [Traffic Act](#) which provides that:

A person who contravenes or fails to comply with the provisions of this section commits an offence and is liable to a fine not exceeding ten thousand shillings or, in default of payment, to imprisonment for a term not exceeding twelve months.

11. It is trite law that sentencing is at the discretion of the court to which the appellate court should not unnecessarily interfere with unless the same is excessive; arrived at after considering irrelevant factors or applying wrong legal principles. As regards the question of excessive sentence, the court is duty bound to consider the gravity of the offence among other factors which in this case was very serious and somebody lost life. I do not find anything wrong with the same to warrant interference.

12. On the question of the period spent in remand custody pursuant to section 333(2) of the CPC, the record is clear that, the applicant was arrested on 12.11.2022 and remained in custody till 11.04.2023 when he was sentenced. It follows that he spent a period of roughly five months in lawful custody.

13. The court is alive to the provisions of section 333(2) of the [Criminal Procedure Code](#) provides: -

“Subject to the provisions of Section 38 of the [Penal Code](#), every sentence shall be deemed to commence from and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under sub section (1) has prior, to such sentence shall take account of the period spent in custody.”

14. It is clear from the above proviso, the law requires courts to take into account the period spent in remand custody by the accused. [Also see [Abamad Abolfathi Mohammed & Another vs Republic](#) [2018] eKLR].

15. In view of the proviso under section 333(2) of the [CPC](#), am inclined to direct that in computing sentence, the period of five months spent in remand custody be taken into consideration.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8TH DAY OF MARCH 2024

J. N. ONYIEGO

JUDGE

