



**Wanjohi v Republic (Criminal Revision E053 of 2023)
[2023] KEHC 18527 (KLR) (2 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18527 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL REVISION E053 OF 2023**

GL NZIOKA, J

JUNE 2, 2023

BETWEEN

SAMUEL KIBUIYA WANJOHI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. On March 20, 2023, the applicant was arraigned before the Chief Magistrate's court charged vide Traffic Case No E199 of 2023, with the offence of driving a commercial vehicle on a public road while under influence of alcohol contrary to section 45 of the *Traffic Act* (Cap 403) Laws of Kenya. The particulars of the offence are as per the charge sheet.
2. He pleaded guilty and was convicted on his own plea of guilty. He was then sentence to pay a fine of Kshs 100,000 and in default to serve 12 months' imprisonment.
3. He is now seeking for review of sentence on the grounds that he pleaded guilty to the charges. That he is 40 years old with a wife and 2 school going children in Form 3 and standard 8. That, he is the sole bread winner not just for his immediate nuclear family but extended family wherein he takes care of his sickly mother and his deceased sister's children. That he is remorseful and prays for a non-custodial sentence.
4. The Respondent did not file any response to the application, the same having been considered under rapid results initiative on decongestion. However, the pre-sentence report filed is favourable and a sentence under the *Community Service Order Act* is recommended.
5. Be that as it may, the provisions of section 362 and 364 of the *Criminal Procedure Code* provides the threshold of exercise of revisionary powers of this court. The subject provisions states: -

“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. However, the section should be read together with section 364 of the Code which states as follow: -

- “ 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.”

7. Consequently, the subject power will be exercised where the impugned sentence is either incorrect, illegal or improper. Thus the objective of revisionary jurisdiction is to set right a patent defect or error of jurisdiction or law and that this jurisdiction will only be invoked where the decision under challenge is; grossly onerous, there is no compliance with the provisions of the law, or the finding re-ordered are based on no evidence, or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.

8. Pursuant to the aforesaid, it suffices to note the sentence for the offence the applicant was charged for is provided for under section 45 (1) of the Traffic Act which states that: -

- “ 1 Any person who, when driving or in charge of, or during any period of duty in connexion with the driving of, a public service vehicle or a commercial vehicle, drinks any intoxicating liquor shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.”

9. Therefore the sentence of a fine of Kshs 100,000 and in default 12 months imprisonment is lawful and legal and not subject to review. It is also noteworthy that, the applicant has not even served a half of the custodial sentence which is already lenient. As much as his plight and plea is considered the sentence



meted out must be both rehabilitative and deterrent as the offence is serious. A drunken driver on the road endangers all road users and can cause a very serious fatal accident.

10. In the circumstances I order that, the applicant serves a custodial sentence of six (6) months with effect from March 20, 2023 and then six (6) months on Community Service Orders at an identified placed.

11. It is so ordered.

DATED, DELIVERED AND SIGNED THIS 2ND DAY OF JUNE 2023.

GRACE L NZIOKA

JUDGE

In the presence of:

Applicant present, virtually

Mr Atika for the Respondent

Ms Ogutu Court Assistant

