



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Republic (Criminal Appeal E037 of 2022)
[2023] KEHC 23405 (KLR) (13 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 23405 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL APPEAL E037 OF 2022
WM MUSYOKA, J
OCTOBER 13, 2023**

BETWEEN

STEPHEN MWANGI APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from judgment, conviction and sentence by Hon. Mrs. Lucy Ambasi, Chief Magistrate, CM, in Busia CMCTRC No. E437 of 2022, of 22nd February 2022, which appears to be incorrect, if plea was taken on 22nd June 2022)

JUDGMENT

1. The appellant, Stephen Mwangi, had been charged before the primary court, on 4 counts, of causing an obstruction on a public road, contrary to section 53(4) of the [Traffic Act](#), Cap 403, Laws of Kenya; overlapping other trucks on a queue, contrary to Rule 73(4) as read with Rule 90 of the [Traffic Rules](#), made under the [Traffic Act](#); failing to stop a motor vehicle after having been stopped by a police officer in uniform, contrary to section 52(1)(c) as read with section 52(2)(c) of the [Traffic Act](#); and failing to obey verbal instructions given to him by police officers contrary to section 52(1)(9) of the [Traffic Act](#).
2. Plea was taken on 22nd June 2022. The record reflects that the appellant pleaded not guilty in all 4 counts. It was noted that he had previous convictions, and he was fined in respect of all 4 counts, with imprisonment in default for 18 months on count I, 14 days in Count II, 1 year in counts III and IV. The default clause with respect to count IV, to run consecutively, appears to be misplaced. He was also banned from driving for 3 months.
3. The appeal herein arises from that conviction, and principally is against the sentence. The appellant avers that he pleaded guilty, was a first offender, was remorseful and was undertaking to not repeat the offence, never was previously on the wrong side of the law, and his family was suffering as he was the sole breadwinner.



4. The appeal was canvassed by way of written submissions, following directions given on 29th June 2023.
5. The submissions by the appellant turn around the same issues. He avers that the 4 counts arose out of 1 incident, out of which he was very remorseful, and accepted responsibility. He states that he was a first offender, who acted out of alcoholism, and was remorseful. He prays that he be considered for a non-custodial sentence, the fines be reduced downwards, and the default sentence be made to run concurrently..
6. The respondent has cited section 348 of the *Criminal Procedure Code*, Cap 75, Laws of Kenya, to argue that a person who has pleaded guilty can only appeal against the sentence, to the extent of its legality. On legality of sentence, it is submitted that the fines imposed conformed with what is provided for under the *Traffic Act*, for the offences charged. It is averred that all the sentences imposed were legal, except for the one under count II, where a fine of ksh 700.00 was imposed, with a default sentence of 14 days imprisonment; instead of a fine of ksh 600.00, with a default of 2 months imprisonment. *Wanjema v Republic* [1971] EA 493 (Trevelyan, J), was cited, for the point that an appellate court ought to not interfere with the discretion of the court in sentencing, except where something material was overlooked, or some immaterial fact had been taken into account, or the court acted in wrong principle, or the sentence was manifestly excessive.
7. I have gone through the record. I have the impression that this is not really an appeal, but mitigation afresh. I agree, under section 348 of the *Criminal Procedure Code*, an appeal on sentence, with regard to a guilty plea, should turn on the legality of sentence. I have looked at the provisions of the *Traffic Act*, under which the appellant was charged, and I agree that all the sentences imposed were within the law, except for the count II, where the fine imposed exceeded what the law prescribes. I agree with the appellant, the 4 counts arose from the same incident, which happened on 12th June 2022, and, therefore, the offences were committed in 1 transaction. The trial court should have considered, in the circumstances, that the default sentences of imprisonment ought to run concurrently, rather than consecutively. However, the order on the sentences running consecutively is vague and ambiguous.
8. In view of the foregoing, the appeal herein partially succeeds. I uphold the sentences with respect to the fines in all the counts, except for count II, which I reduce from ksh 700.00 to ksh 600.00. I shall also interfere with the default clause, so that the terms of imprisonment in respect of all the 4 counts shall run concurrently. The appeal is allowed to that extent. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 13TH DAY OF OCTOBER 2023

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Appearances

Stephen Mwangi, the appellant, in person.

Mrs. Chepkonga, instructed by the Director of Public Prosecutions, for the respondent.

