



**Kariuki v Republic (Criminal Revision E570 of 2024)
[2024] KEHC 15176 (KLR) (Crim) (2 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15176 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E570 OF 2024
LN MUTENDE, J
DECEMBER 2, 2024**

BETWEEN

STEPHEN KARIUKI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Stephen Kariuki, the Applicant, was indicted for traffic offences of causing death by dangerous driving and Failing to attend court. Following the incident the applicant was released on cash bail of Kshs 20,000/- but he failed to turn up as directed. The case was filed in court and a warrant of arrest issued. The motor vehicle he was in control of was traced and detained prior to the accused being found. On appearance he admitted the charges at the outset, was convicted and sentenced to pay a fine of Kshs 100,000/ and, in default to serve two (2) years imprisonment on the 1st Count, and, Kshs 30,000/- and, in default to serve Six (6) months imprisonment on the 2nd Count.
2. Contented with the conviction but aggrieved by the sentence meted out, the applicant seeks review, premised on grounds that the sentence is punitive and excessive. He prays to be released on a non-custodial sentence.
3. The applicant approached the court pursuant to provisions of Section 362 and 364 of the Criminal Procedure Code (CPC). The stated stipulations of the law provide thus:

(362) 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.



(364)

- (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.
4. Section 362 of the [CPC](#) primarily pertains to powers to review decisions of the lower court to ensure errors in law and the procedure are addressed. The court assesses the correctness, legality, and propriety of the findings or sentence passed so as to ensure justice is seen to be done. The resultant action of the court is to affirm, overturn the decision or give a remedy that may be reasonable.
 5. The appellant was indicted under the [Traffic Act](#). Section 46 of the Act which makes it an offence to drive in a dangerous manner. For a first conviction the offender can be fined up to 100000/-or imprisoned for up to two years.
 6. And, Section 117(8) that provides thus:

...(8) If any person having been served with a notification issued under this section fails either to attend the court on the day and at the time specified in such notice or to plead guilty and pay the statutory maximum penalty in the manner indicated before such day, he may be brought before the court either by summons or by warrant and, unless he shows good cause to the contrary, shall be guilty of an offence and liable forthwith by order of the court to a fine not exceeding two hundred shillings or to imprisonment for a term not exceeding one month.
 7. The provision of law outlines the penalty for failing to adhere to comply with the order to turn up following the notice given. The applicant was brought to court under warrant of arrest. Having been convicted, he ought to have been fined a paltry 200/- or serve one month imprisonment, which has already been served.



8. The applicant was obligated to be careful as he drove the motor vehicle so as not to endanger other road users. He contravened the legal requirements by committing the offence that he readily admitted upon arraignment. His conduct, the fact of absconding clearly demonstrated that he tried to avoid prosecution and consequences that would follow. He evaded arrest for four months or thereabout, and upon arraignment he only sought forgiveness and promised not to repeat the act.
9. The applicant complains that the sentence meted out was punitive. The trial court has discretion in sentencing such that the appellate court can only interfere if the lower court acted on wrong principles of law or if the sentence is manifestly excessive or is not proportional to the gravity of the offence, which must be demonstrated.
10. The lower court did err in meting out an illegal sentence on the 2nd Count that I do correct, but, It neither made an error in reaching the decision to impose the sentence in respect of the 1st Count nor misinterpreted the statutory provisions of the law. The sentence that was legally sound was commensurate with the offence committed which does not call for intervention of this court.
11. This court has been called upon to review the sentence to a non-custodial one or to reduce the fine payable. It is apparent the applicant has not been able to pay the fine. Although the offender acknowledged responsibility of the action taken, he has not insinuated having participated in rehabilitation programs that exist in prisons such as counselling or generally education that would address the underlying issues related to his criminal behavior. There is nothing to suggest that he will be reintegrated into the society. Therefore, he is not suitable for a non-custodial sentence.
12. The upshot of the above is that; other than the illegality noted with regard to the 2nd count that stands corrected, the application fails and is accordingly dismissed. For avoidance of doubt, the applicant is required to pay a fine of Kshs 100,000/-or serve 2 years imprisonment being effective from 29th January,2024.
13. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 2ND DAY OF DECEMBER, 2024.

L. N. MUTENDE

JUDGE

