



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

MISC. CRIMINAL APPLICATION NO. E001 OF 2021

CORAM: HON. R.E. ABURILI J

GEORGE OTIENO OWINO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Application from the conviction delivered on 22.11.2019 in Siaya PM's

Court Traffic Case No. 265 of 2019 by Hon. Muthoni Mwangi, Resident

Magistrate and Siaya HC Cr. Revision No. 96 of 2019 on 19.12.2019)

RULING

1. This matter has taken twists and turns. I must give it some historical perspective. The Applicant George Otieno Owino was charged before the PM's court at Siaya in Traffic Case No. 265 of 2019 with the offence of careless riding of a motorcycle contrary to Section 49(1) (a) of the Traffic Act Cap 403 Laws of Kenya.

2. Particulars were that on 21/11/2019 at about 0840 hours within Siaya Township near County Assembly Office, in Siaya Sub county within Siaya County being a rider of motorcycle Reg. Number KMEJ 415R make Boxer Bajaj, he did ride the said motorcycle on a public road carelessly without due care and attention to other road users and knocked motor cycle Reg. No. KMDT 364W from behind and caused slight injuries to the rider and one pillion passenger.

3. When the Applicant was arraigned before Hon. Muthoni Mwangi, Resident Magistrate Siaya on 22/11/2019, he pleaded guilty to the charge and admitted all the facts as true. He was convicted accordingly. In mitigation, he stated that brakes failed. The trial court then ordered for a Probation Report on the convict and set the matter for mention for the report and sentencing.

4. On 5/12/2019, the Presentencing Report was not ready hence the matter was rescheduled for 9/12/2019 and when the Probation Report was finally filed, it revealed that the convict was suffering from a mental illness hence the trial magistrate directed for a Mental Assessment report prior to sentencing.

5. On 17/12/2020, a Mental Assessment was done at Jaramogi Oginga Odinga Teaching and Referral Hospital on the convict and it revealed that the convict suffered from a mental/psychiatric condition hence not fit to plead to the charges. Following the above report, and as the convict had already been convicted on his own Plea of guilty, the trial court on 19/12/2019 directed that the trial court file be placed before this court for revision.

6. This court received the trial court file vide HCR Revision case No. 96/2019 and after considering all the above facts, I quashed the conviction of the Applicant by the trial court and I set it aside, on account that the convict had no capacity to plead to the charge hence the conviction was a nullity.

7. I then ordered that he trial court file be remitted back to the trial court and plea taking to await the Psychiatrist's report from Mathari Hospital where the applicant was committed for treatment. I gave a Mention date for 23//2020.

8. The above mention date fell on a covid-19 intensive week hence nothing transpired. In the meantime, a removal order to Mathare Hospital was issued.

9. While the situation remained as it is, on 5/1/2021 this court received a letter from the Officer Incharge Siaya G.K. Prisons indicating that the Superintendent in Charge, Mathare Hospital had since suspended the admission of patients due to the outbreak of covid-19 pandemic and the applicant accused was still in prison custody.

10. The Officer Incharge requested that the court considers the case for withdrawal under Section 204 of the Criminal Procedure Code for the subject to be handed over to the relatives for continuation of his treatment elsewhere. It is upon receipt of the above letter that another file was opened being Misc. Cr. Application No. E001 of 2021 and brought before me for directions on 21/1/2021.

11. Upon my perusal of the letter of Officer Incharge Siaya G.K. Prison, I directed that the subject be taken to hospital for mental reassessment.

12. On 10/2/2021, a report was filed in this court. It is dated 9/2/2021 from Jaramogi Oginga Odinga Teaching & Referral Hospital stating that the subject displays no psychopathology whatsoever and that he is now fit to plead to the charges facing him.

13. Today, the subject was brought before me and I interviewed him in Open court. I also interviewed 3 of his adult brothers who stated that the subject was normal but after the material accident is when he started behaving abnormally. They stated that if the subject is released, they will take him to Hospital for further follow up on his mental status.

14. This court is therefore faced with a situation where at one time the subject took Plea and was convicted on his own Plea of guilty and pending sentence, he was declared mentally unfit but after over one year in prison, pending committal to a mental facility for treatment, he was reassessed and found to be mentally sound.

15. I have personally spoken to the subject and other than being hyperactive, he appears mentally sound as diagnosed by the psychiatrist in the latest Mental Assessment Report. However, as stated by his brothers, he appears to have suffered trauma after the accident hence the initial diagnosis meaning that he requires follow up at a medical facility to stabilize him completely.

16. The subject has been in prison for over one year from 21/11/2019 to date; which is 1 year and three months.

17. In my humble view, subjecting him to trial will be punishing him twice. He has already served sentence that the trial court could have imposed on him had he been sentenced for careless riding. The other motor cyclist and pillion passenger who collided with him suffered slight injuries.

18. For the above reasons, I hereby order that the subject George Otieno Owino shall forthwith and unless otherwise lawfully held, be released from prison and his siblings are directed to ensure that he is followed up with medical attention.

19. Orders accordingly.

20. File closed.

Dated, signed and Delivered at Siaya this 1st Day of March 2021

R.E. ABURILI

JUDGE