



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

CRIMINAL REVISION NO. E076 OF 2021

KENNETH KARANI.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

RULING

The applicant has filed this application under a certificate of urgency seeking an order of revision of the sentence imposed on 24/6/21. The application is based on the fact that he was charged in court with three counts under the Traffic Act and ordered to pay a fine as follows:-

1st count:

- 1) Interfering with safe driving contrary to **Section 61(4) of the Traffic Act** and ordered to pay a fine of Kshs.50,000/- in default one year imprisonment.
- 2) Failing to maintain parts and equipment of a motor vehicle contrary to **Section 55(1) as read with Section 58(1) of the Traffic Act** and was ordered to pay a fine of Kshs.10,000/- or in default to serve six months imprisonment.
- 3) Carrying uninsured passengers contrary to **Section 5(b)** as read with **Section 17** of the **Insurance Act** and was ordered to pay a fine of Kshs.10,000/- in default 6 (six) months imprisonment.

The trial magistrate directed that **Section 333 of the Criminal Procedure Code** to be considered.

The applicant desires that the sentence of Kshs.33,333/- in default eight (8) months imprisonment be revised and the proper sentence under **Section 61(4) of the Traffic Act** be imposed.

I have considered the application. The High Court exercises supervisory jurisdiction over Sub-ordinate Courts. The jurisdiction is donated under **Article 165(6) of the Constitution** which provides-

“ The High Court has supervisory jurisdiction over the Sub-ordinate Courts and over any person, body or authority exercising a judicial or quasi judicial function, but not over a superior court.”

7) Superior court for the purpose of clause (6) the High Court may call for the record of any proceedings before any sub-ordinate Court or person, body or authority referred to in clause (6) and may make any order or give any direction it considers appropriate to ensure the fair administration of justice”

The jurisdiction is further expounded under **Section 362 of the Criminal Procedure Code**. As part of the jurisdiction, the court may call for the records of the Sub-ordinate Court and examine it to determine whether the orders are correct, lawful regular and proper. If the court examines the records and find that the impugned order is incorrect, illegal or irregular, the court will exercise its powers of revision. The orders which the court may issue on revision are set out under **Section 364 of the Criminal Procedure Code**. The Section provides:

“(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.

(c) in proceedings under section 203 or 296 (2) of the Penal Code, the Prevention of Terrorism Act, the Narcotic Drugs and Psychotropic Substances (Control) Act, the Prevention of Organized Crimes Act, the Proceeds of Crime and Anti-Money Laundering Act, the Sexual Offences Act and the Counter-Trafficking in Persons Act, where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.
(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.

The court has jurisdiction to alter the sentence where the finding has resulted in a conviction. In this case the applicant contends that the sentence imposed was unlawful as it was not in accordance with the sentence provided under the section which he was charged. This court exercises revisionary powers where it is alleged that the order was wrong. In this case the applicant was charged under **Section 59(2)** as read with **Section 61(4) of the Traffic Act.**

Section 59(2) provides:

“Obstructing driver of motor vehicle”

“(2) In no motor vehicle shall passengers be carried in such numbers or in such a position as to be likely to interfere with the safe driving of such motor vehicle; and in the event of a contravention of this subsection the driver and the person in charge of the motor vehicle shall be guilty of an offence.”

Section 61 of the Traffic Act deals with riding in a dangerous position. The punishment under **Section 61** is provided under **subsection 4 of the Act. Section 61(4) of the Traffic Act** provides: -

“(4) If a person refuses or delays or fails to comply with an order by a police officer in uniform under subsection (3), he shall be guilty of an offence and liable, whether or not he is in addition liable to any penalty for contravening subsection (1) or (2), to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one month.”

It is clear that the punishment provided under **Section 61(4)** of the Traffic Act is specific to offences under **Section 61** and does not apply to offences under **Section 59 of the Act**. This means that since no punishment is provided under **Section 59 of the Traffic Act**, a person charged under the Section is supposed to be punished under the general punishment provided under the part. The penalties are provided under **Section 67 of the Traffic Act** which provides:

“ Any person who contravenes or fails to comply with any of the provisions of this Part shall be guilty of an offence and liable, where no penalty is specifically provided, on first conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three months, and on each subsequent conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or to both.

(2) Any court before which a person is convicted of any offence under this Part (except an offence under section 52(d), 52A or 52B), shall in every case in addition to any other penalty specifically provided, order particulars of the conviction to be endorsed on any driving licence held by the person convicted.”

In view of the provision of this section, it is clear that the punishment of Kshs.50,000/- in default one year imprisonment was clearly wrong and unlawful.

In the circumstances I find that this court has reason to revise the sentence imposed by the trial magistrate. I have also considered the sentence under counts 2 & 3 where the applicant was ordered to pay a fine of Kshs.10,000 in default six months imprisonment. This sentence was wrong as it has not complied with **Section 28 of the Penal Code** which provides that where a person is fined Ksh.2,500/- and not exceeding Kshs.15,000/- the default sentence is three months. I find the sentence imposed on the 2nd and 3rd counts was incorrect and unlawful. In the circumstances I have reason to interfere with the sentence on revision and alter it.

I therefore issue orders on revision as follows:-

1) The sentence by the trial magistrate is revised and set aside.

2) I alter the sentence as follows:-

1st Count- A fine of Kshs.10,000/- or in default three (3) months imprisonment.

2nd Count- A fine of Kshs.10,000/- in default three (3) months imprisonment.

3rd Count- A fine of Kshs.10,000/- in default three (3) months imprisonment. The court had directed that the time spent in custody be considered as provided under **Section 333 of the Criminal Procedure Code.**

The applicant was remanded in custody on 8/3/2021 and was sentenced on 24/6/2021. The period should therefore be taken into account to reduce the sentence. The ruling be served on the office of the Director of Public Prosecutions.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 12TH DAY OF JULY 2021.

L.W. GITARI

JUDGE