



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

CRIMINAL REVISION NO.93 OF 2020

JOSEPH MBUGUA MUKAMI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Revision of the Original Sentence dated 29.10.2019

in Nanyuki Traffic Case No.92 of 2019– N. Thuku, PM)

04.05.2020

Before Justice H P G Waweru

In Chambers

ORDER ON REVISION

1. I have examined the record of the trial court.

2. The convict herein, JOSEPH MBUGUA MUKAMI, was convicted after trial of three traffic offences and sentenced on 29/10/2019 as follows:-

Count (i):- Causing death by dangerous driving contrary to Section 46 of the Traffic Act, Cap 403 – Sentenced to a fine of Kshs.50,000= and in default to serve one (1) year imprisonment. In addition he was sentenced to one (1) year imprisonment and also disqualified from driving for three (3) years from the date he completes imprisonment.

Count (ii):- Failing to maintain motor vehicle parts and equipment contrary to Section 55(1) and 58(1) of the Traffic Act. – Sentenced to a fine of Kshs.5,000= and in default to serve three (3) months imprisonment.

Count (iii):- Driving a motor vehicle on a public road without an inspection sticker contrary to Section 17A(3)(a) and 29(1) of the Traffic Act. – Sentenced to a fine of Kshs.2,000= and in default to serve one (1) month imprisonment.

The Default sentences were ordered to run concurrently. He did not pay any of the fines

3. The order for the default sentences to run concurrently was illegal in view of the provison to *Section 37 of the Penal Code* **which reads -**

“Provided that it shall not be lawful for a court to direct that a sentence of imprisonment in default of payment of a fine shall be executed concurrently with a former sentence under sub-paragraph (i) of paragraph (c) of subsection (i) of Section 28 or of any part thereof.”

In other words, sentences in default of payment of fines must run consecutively!

4. It is also to be noted that for a fine not exceeding Kshs.50,000= the default sentence should not be more than 6 months.

See *Section 28(2) of the Penal Code*.

5. As regards Count (i), the trial court did not explain why it was **necessary to impose both a fine and a term of imprisonment, even after noting that the conduct of the convict throughout the trial showed he was remorseful.**

6. Because of the current Coronavirus (COVID-19) crisis in our country, **and in order to decongest the prisons, and in exercise of the powers of court under Article 159(2) of the Constitution and Sections 362 and 364 of the Criminal Procedure Code, I will set aside the term of imprisonment of one (1) year in Count (i) and also the default sentence of one (1) year in the same count, and substitute therefore the time already served. The default sentences in Counts (ii) and (iii) have already been served. That means that the convict shall be set at liberty forthwith unless otherwise lawfully held. It is so ordered.**

As for the order disqualifying the convict from driving for a period of three (3) years, I decline to interfere with the same. It is so ordered.

DATED AT NANYUKI THIS 4TH DAY OF MAY, 2020

H.P.G. WAWERU

JUDGE.

DEPUTY REGISTRAR

NANYUKI HIGH COURT