

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CRIMINAL REVISION CASE NO. 18 OF 2019

WILFRED KIPCHUMBA BIRGEN.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The ruling herein regards an application for review of a lower court finding that the applicant has a case to answer in a traffic charge of careless driving contrary to *Section 49 (1) (a)* of the *Traffic Amendment Act No. 2 of 2012, Cap 403 Laws of Kenya*.

The application was brought under Certificate of Urgency and the prayer to this court is to review the order of the lower court and find that the applicant has no case to answer and subsequently acquit him. The main ground upon which the application is founded is that the charge sheet is fatally defective. The applicant submitted that the Traffic Act was amended by the Traffic (Amendment) No. 2, which did away with the offence of careless driving and substituted the same with the offence of driving without due care and attention, under *Section 49 (1) (a)* and *(b)*.

The prosecution opposed the application on the ground that the raised issues are for the appeal and not revision.

I have weighed the position of each side on the issue raised. *Section 364 (5)* of the *Criminal Procedure Code* is clear in that 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. It is therefore vivid that for an appealable issue, a party who has the right of appeal cannot proceed by way of a review, but an appeal. The applicant herein by coming to this court by way of a review, offends the said provision and the said application shouldn't be entertained. It lacks merit and it is hereby dismissed. The matter is referred to the trial court for hearing.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 8th day of October, 2020.

In the presence of:-

Accused (Absent)

Mr. Oyalo for applicant

Ms Limo for respondent

Ms Gladys – Court assistant