



REPUBLIC OF KENYA



**Kathunkumi v Republic (Revision Case 57 of 2019)
[2019] KEHC 12501 (KLR) (18 February 2019) (Ruling)**

Joel Kathunkumi v Republic [2019] eKLR

Neutral citation: [2019] KEHC 12501 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
REVISION CASE 57 OF 2019
A MABEYA, J
FEBRUARY 18, 2019**

BETWEEN

JOEL KATHUNKUMI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Joel Kathukumi (“the applicant”) was charged in Isiolo Traffic Case No 108 of 2019 with the offence of carrying excess passengers contrary to section 100(2) of the *Traffic Act*, Cap 403 of the Laws of Kenya. It was alleged that on 7th February, 2019 at about 3.50pm along Isiolo Meru Road within Isiolo County, being the driver of Motor Vehicle registration number KBN 170V make Isuzu School Bus, the applicant did carry 111 passengers (pupils) instead of 51 thereby carrying 60 excess passengers.
2. The applicant pleaded guilty to the charge and was on 8th February, 2019 convicted and sentenced to pay a fine of KShs.160,000/- in default to serve one and a half 1 ½ years imprisonment. The decision was made by the hon. E. Ngugi, SRM.
3. Aggrieved by the said sentence, the applicant has through a letter dated 8th February 2019, sought the revision of the said sentence. In the letter, the applicant pleaded for leniency stating that he was a first offender and a law abiding citizen.
4. I have considered the application. Section 100(2) of the *Traffic Act* Cap 403, provides:-

“If any public service vehicle carries more persons, baggage or goods than it is licensed to carry, the driver, the conductor and the owner of such vehicle commits an offence each and shall be



liable, upon conviction, to a fine not exceeding twenty thousand shillings and an additional amount of five thousand shillings for each person in excess of the licenced capacity”.

5. In the present case, the record shows that the motor vehicle was licensed to carry 51 passengers. At the time of arrest, the vehicle was carrying 111 passengers therefore having an excess of 60 passengers. Section 100(2) of the *Traffic Act*, provides for a fine not exceeding KShs.20,000/- and for KShs.5,000/- for each excess passenger. Since the applicant had carried 60 excess passengers, the fine would have been KShs. 20,000/- plus KShs.5,000/- by 60 making the total amount to be KShs.320,000/- as the maximum fine.
6. I note that the court considered that the applicant was a first offender. It also noted the applicant’s mitigation. The Court was also aware of the maximum fine that it was allowed to impose by law but chose to impose half the fine. In view thereof, I find no irregularity in the sentence. The trial court had already exercised leniency on the applicant by fining him half the amount he was liable to be fined.
7. I note that the applicant was carrying school pupils. The number of pupils at the time of the arrest were over double the number the vehicle is licensed. That was not only dangerous to the pupils aboard that vehicle, it could have likewise be dangerous to the other road users. It was an extremely careless act. The trial court must have considered that the applicant had endangered the lives of the 111 children on board that vehicle. In my view, the fine is in tandem with the offence.
8. In this regard, I find no merit in the application for revision and the same is hereby dismissed.

DATED AND DELIVERED AT MERU THIS 18TH DAY OF FEBRUARY, 2019.

A. MABEYA

JUDGE

