REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 323 OF 2019

MATHEW NDAKALA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant was charged in Milimani Traffic Case No. 907 of 2019.with the offence of causing death by dangerous driving contrary to **Section 46 of the Traffic Act Cap 403 Laws of Kenya.** It was alleged that on 22nd December, 2018 at about 2145 hrs along Kenyatta Avenue in Nairobi within Nairobi County, being the driver of motor vehicle Reg. No. KAT 134Y Nissan UD bus did drive the said motor vehicle on the road recklessly or at a speed or in a manner which was dangerous to the public having regard to all the circumstances of the case including the nature, condition and use of the road at the time thereby hitting one female pedestrian, namely Stella Moraa Nyaribi causing her death. He was convicted on his own plea of guilty on 14th January, 2019. He was sentenced to pay a fine of Kshs. 500,000/= in default serve 3 years imprisonment.

2. He filed the instant Chamber Summons on 14th June, 2019 seeking a review of the sentence. In the supporting affidavit, he pleaded that he was a first offender and urged the court to consider the period he had been in custody by which the sentence should be reduced. In his oral submission, he stated that he knew he committed the offence but swore to engage in another occupation once he left the prison other than driving public service vehicles.

3. Ms. Nyauncho for the Respondent urged the court to correct the mistake the trial court made by violating Section 28(2) of the Penal Code with respect to imposition of default sentences. Nevertheless, she opposed any reduction of the fine.

4. I entirely concur with the learned State Counsel that the sentence imposed on the Applicant in so far as the fine is concerned was lenient having regard to the gravity of the offence. Nevertheless, where a fine is imposed, the default sentence must accord with Section 28(2) of the Penal Code. In that regard, the default sentence in the instant case ought not to have exceeded 12 months imprisonment. I accordingly partially allow this application with orders that the Applicant pays a fine of Kshs. 500,00/= in default serves 12 months imprisonment.

DATED AND DELIVERED THIS 19TH DAY OF NOVEMBER, 2019

G.W. NGENYE-MACHARIA

JUDGE

In the presence of;

1. Applicant in person.

2. ……..for the Respondent.