



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL REVISION NO. 26 OF 2019

CHRISTOPHER KARIUKI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

A. Introduction

1. This ruling is for the application dated 26th September 2019 in which the applicant seeks for orders for revision of the sentence passed by the trial court on the 12th September 2019 in Embu Traffic Case No. 403 of 2019.
2. It is the applicant's argument that he had a valid driving license but had forgotten to carry it on the material day. He further stated that he was not able to tell the court that he had forgotten to carry the licence when he was arrested.
3. In rejoinder, the respondent opposed the application for revision on the grounds that under Section 362 of the Criminal Procedure Code the applicant was required to prove illegality or incorrectness of an order or sentence which the applicant had failed to prove. Reliance on this proposition was placed on the case of **John Njeru Gachai v Republic [2018] eKLR** where it was held that proof of the incorrectness, mistake or illegality is necessary.

B. Analysis of the Law

4. The powers of the High court in revision are contained in Section 362 through to 366 of the Criminal Procedure Code (cap.75). Section 362 specifically provides as follows: -

“362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court”.

5. What the High Court can do under its revision jurisdiction is stated under Section 364 of the Criminal Procedure Code Cap 75. It provides *inter alia* that the High Court in its revisionary jurisdiction cannot reverse or alter an order of acquittal. Secondly, it cannot make an order that is to the prejudice of the accused person unless he has had an opportunity of being heard either personally or by an advocate. Thirdly, when an appeal arises from such sentence finding or order of the magistrate's court and no appeal is brought, revision proceedings cannot be sustained at the insistence of the party who could have appealed.
6. In my view, the revisionary jurisdiction of the High Court should only be invoked where there are glaring acts or omissions but should not be a substitute for an appeal. In other words, parties should not argue an appeal under the guise of a revision. It is for this reason that the decision whether or not to hear the parties or their advocates is discretionary save for where the orders intended to be made will prejudice the accused person. As was stated by **Waweru, J** in **Republic vs. Samuel Gathuo Kamau [2016] eKLR**, where the Learned Judge observed that:

“Needless to say, that supervisory jurisdiction is exercised as may be provided by law – by way of appeal, revision, etc. it does not include on any perceived power to make a decision on behalf of a subordinate court which that court ought to make. In the case of appeals the supervisory power is exercised in respect to conviction, sentence, acquittal (section 347, 348 and 348A of the Criminal Procedure Code). As for revision, the supervisory jurisdiction is exercised in respect to findings, sentences, orders and regularity of any proceedings. See Article 165(7) of the Constitution and Section 362 and 364 of the Criminal Procedure Code.”

7. The applicant herein was charged with driving a motor vehicle on a public road without a driving licence contrary to Section 30 (7) (a) of the Traffic Amendment Act 2012. In the alternative, the applicant was charged with failing to carry a driving licence contrary to section 36

(1) as read with section 41 (1) of the Traffic Amendment Act 2012. The applicant pleaded guilty. In mitigation the applicant prayed for forgiveness. He was convicted and sentenced to pay Kshs. 10,000/= or serve 5 months' imprisonment.

8. The applicant is prevented from filing an appeal as provided under section 348 of the Criminal Procedure Code. It provides as follows:

“No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent of the legality of the sentence.”

9. On conviction, I find that the trial magistrate relied on the evidence/ facts before him. The applicant has not demonstrated any error, irregularity or illegality on part of the magistrate in regard to conviction. The applicant says he forgot to tell the court that he had a driving licence but had forgotten to carry it. This is a matter that was not before the trial magistrate and therefore not subject to revision under Section 362 of the Criminal Procedure Code.

10. The maximum sentence of provide for driving a motor vehicle on a public road without a driving licence under Section 30 (7) (a) of the Traffic Act 2012 on a first conviction is a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three months whereas the penalty provided for breaching the alternative charge of failing to carry a driving license under Section 36 (1) of the Traffic Act 2012 is on first conviction, a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three months.

11. The applicant was fined was fined Kshs. 10,000/= in default five (5) months imprisonment. The fine was in compliance with the law but the defaulters sentence exceeded the three (3) months provided for by the law.

12. I find that this application is merited on sentence which I hereby correct. The sentence imposed by the magistrate is hereby set aside and substituted with a fine of Kshs. 10,000/= in default one (1) month imprisonment.

13. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 5TH DAY OF DECEMBER, 2019.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Mati for State/Respondent

Applicant in person