



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HIGH COURT CRIMINAL APPEAL NO. 18 OF 2017

PIUS MUTUKU NZUVI.....APPELLANT

-VERSUS-

REPUBLIC.....PROSECUTION

JUDGEMENT

1. The Appellant was charged **with Offence of Failing to Maintain Parts and Equipment Contrary to Section 55(1) and punishable in Section 58(1) of the Traffic Act Cap 40 Laws of Kenya.**
2. Particulars being, on the 26th day of February 2017 at about 09:00 hours along Mombasa-Nairobi road in Mutaa Sub-county within Makueni county, Pius Mutuku Nzuvi being the driver of a motor vehicle **Log No. KBX 189 C-2C 6400 a Mercedes Benz Actros**, drove the said motor vehicle on a public road while fitted with four (4) worn out tyres.
3. When the matter came for plea on 27/02/2017, the accused pleaded guilty and was convicted on his own plea. He was thereafter sentenced to a fine of Kshs.200,000/= or to serve two (2) years imprisonment.
4. Being aggrieved by the said decision, he lodged instant appeal and set out 4 grounds in the petition, namely:-
 - 1) *The facts of the charge were not read out to the accused.*
 - 2) *A conviction should not have arisen from a plea alone where no facts were read to the accused.*
 - 3) *The learned Trial Magistrate did not take into consideration that the prosecutor stated that the Appellant was a 1st offender when sentencing the accused.*
 - 4) *The Appellant's plea was not equivocal.*
5. The matter came for hearing on 25/04/2017 and the parties agreed to canvass via submissions. The Appellant had filed and served but the state counsel Mr. Orinda argued orally.
6. In conceding the appeal, the state counsel submitted that the proceedings were defective as the facts of the charged offence were not read but instead the prosecutor relied on the facts as per the charge sheet.

The state counsel was of the view that a retrial could have been in Order save that the exhibits were released to the owner of the vehicle and the report on alleged worn out tyres was not made. Thus a retrial will be an exercise in futility.

7. Mr. Kanuu for Appellant confirmed that his client got the motor vehicle and there was no report on the alleged worn out tyres.

8. The court has gone through the record and the parties submissions and finds the issues arising to be:-

1) Whether the plea was equivocal?

2) If above (1) is affirmative, what is the appropriate order?

9. From the record of the trial court, it is clear that the charge sheet was read out to the Appellant who admitted the same though the language used was not indicated. When the court asked for the facts to be outlined, the prosecutor just stated that “facts per the charge sheet”

10. In the case of **ADAN-VS- REP.** the court set out proper steps that should be taken in order to record a proper plea. The court of appeal held:-

i. The charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands,

ii. The accused’s own words should be recorded and if they are an admission, a plea of guilty should be recorded,

iii. The prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts,

iv. If the accused does not agree the facts or raises any question of his guilt his reply must be recorded and change of plea entered.

v. If there is no change of plea a conviction should be recorded and a statement of the facts relevant to sentence together with the accused’s reply should be recorded.

11. It is the duty of the trial court to ensure that the accused fully understood the offence he is alleged to have committed and especially when he is unrepresented.

12. The prosecution was under a duty to outline the facts of the offence the Appellant was charged with. Failure to follow the above guidelines renders the procedure followed a nullity.

13. The court thus holds that the plea taking was defective and the subsequent conviction was unlawful. The court thus quashes conviction and sets aside the sentence.

14. On the issue of whether the court should order a retrial, the same would be an exercise in futility as the exhibits were released and there was no report on the status of the alleged worn out tyres.

15. The court therefore orders the Appellant to be set at liberty forthwith and the cash deposited as bail be refunded forthwith.

SIGED, DATED, AND DELIVERED AT MAKUENI 2ND DAY OF MAY, 2017.

C. KARIUKI

JUDGE

