



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL REVISION NO. 27 OF 2015

REPUBLIC

VERSUS

SAMSON OTIENO APPLICANT

RULING ON REVISION

1. The application for the revision of the orders herein was made by **J.N. Kimeu & Co. Advocates** vide letter dated 23/2/2015.
2. The accused was charged in Count I with the offence of riding a motorcycle on a public road without an Insurance cover contrary to **section 4 (1)** as read with **section 4 (2)** of **Traffic Act Cap 403 Laws of Kenya**.

The particulars of the offence were that “on 19/2/2015 at about 8.00 a.m. within **Machakos Township** in **Machakos County** being the rider of a motorcycle Reg. No. **KMDA 778C Skygo** rode the said motorcycle without an insurance cover”.

3. In Count II, the accused was charged with the offence of riding a motorcycle on a public road without a driving licence contrary to **section 30 (1)** as read with **section 30 (7)** of the **Traffic Act Cap 403 Laws of Kenya**.

The particulars of the offence were that “on 19/2/2015 at about 8.00 a.m. within **Machakos Township** in **Machakos County** being the rider of a motorcycle Reg. No. **KMDA 778C Skygo** rode the said motorcycle without a driving licence”.

4. The accused pleaded guilty and was sentenced to a fine of Kshs.10,000/= in default three months imprisonment in each count.
5. There is no **section 4 (1)** and **section 4 (2)** of the **Traffic Act Cap 403 Laws of Kenya**. The same are non-existent. The accused ought to have been charged under the Insurance Motor vehicles and Third Party Risks Act Cap 405 Laws of Kenya in Count I.
6. I have considered the provisions of **section 382** of the **Criminal Procedure Code**. However, the errors and omissions made herein may have prejudiced the accused.
7. **Section 30 (7) Traffic Act** provides for a fine of Kshs.20,000/= or imprisonment for a term not exceeding three months for a first conviction. The sentence of Kshs.10,000/= in default three months imprisonment in Count II is within the law.
8. The procedures for plea taking were not complied with. The facts were not read out to the accused (*See for example Adan Vs Republic (1973) EA 445*).
9. With the foregoing, I quash the conviction and set aside the sentence in both Count I and II. The accused was convicted and sentenced on 19/2/15. It appears the fine has not yet been paid. Taking into account the period already served, I will not remit the file back to the lower for fresh

plea taking. The accused is therefore at liberty unless otherwise lawfully held.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 12th day of March 2015.

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B. THURANIRA JADEN

JUDGE