



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISC. REVISION NO. 71 OF 2015
(From the original Conviction and Sentence in a Traffic Case No. 1996 of 2014

Mariakani Law Courts – Hon. Lutta - SPM)

1. CHARLES KARUIRU GICHUKI

2. CELL PRO COMMUNICATIONS.....APPLICANTS

VERSUS

REPUBLIC.....RESPONDENT

REVISION

The two (2) applicants were charged with two traffic related cases.

The first applicant Charles Karuiru Gichuki was charged with using an overloaded vehicle on a public road contrary to section 55(2) as read with Section 58(1) and rule 41(2) of the Legal notice number 93 dated 1st June, 2013 of the Traffic Act.

The particulars being that:-

“On the 21st day of September, 2014 at 12:09 p.m. Along A109 at Mariakani Weigh bridge being the driver of motor vehicle registration number KBT 324 M make Man class 123 SS DDD (6G) used the said motor vehicle on a public road with greater load than the specified load on an axle group 3 by carrying 30440 kilogrammes instead of the legal limit of 24,000 kilogrammes an overload of 5250 Kilogrammes above the legal limit plus five per cent Grace as per attached Kenya National Highway Authority axle load weighing ticket number KMA 140233 DB”.

The second applicant Cell Pro Communications were charged with allowing an overloaded motor vehicle on a public road contrary to section 55 (2) as read with section 58(1) (2) and rule 41 of the traffic rules and 12th schedule under the traffic rules of the Traffic Act.

The particulars being that:-

“On the 21st day of September, 2014 at 12:42 a.m. at Mariakani Weigh bridge along Mombasa-Nairobi road Kaloleni – Kilifi County being the owner of Motor Vehicle registration number KBT 324M Trailer NO. ZE 1136 make Man allowed the same motor vehicle to be driven on a public road while overloaded with excess weight of 5240 Kilogrammes on the six axler”.

They each pleaded guilty to the two Counts and each was convicted on his own plea.

Before Sentencing the prosecutor informed the Court that the first Accused had a previous Conviction in Criminal Case No. 436 of 2014.

He then proceeded to fine each Ksh. 100,000/= in default 6 months imprisonment.

The revision is sought on the grounds that the fine of Ksh. 100,000/= was arrived upon the prosecutions allegation that the Accused persons had a record of previous Conviction in Traffic Case No. 436 of 2014. That the correct position was that the Accused persons were first offenders and that Traffic Case No. 436 of 2014 was against the JACOB MASKATH and CELLO THERMOWARE and not the Accused persons herein.

Further that the trial magistrate imposed a higher fine of Ksh. 100,000/= against each of the Accused persons which is for second or subsequent offenders instead of Ksh. 50,000/= which is the fine for first offenders as provided under rule 41 of the Traffic amendment rules, 2008 section 362 of the Criminal Procedure Code provides for the powers of the High Court on matters of revision thus,

“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 any propriety of any finding, Sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate Court”.

A perusal of the lower Court file shows that the prosecutor did indeed indicate and inform the trial magistrate the fact that the applicants in this application for review were not first offenders but had previously been convicted in Traffic case No. 436 of 2014.

At that point the Trial magistrate was duty bound to inquire from the Accused persons before him whether it was correct that they had previous convictions and the prosecution be called upon to produce the records of Conviction so as to confront the Accused persons with that evidence. The importance of this requirement is not difficult to understand.

Sentencing is premised on many considerations topmost being the antecedents of an accused person.

That's why in the Traffic Act and rules there are, placed differentials in the Sentencing regime.

In the present case the overload was 5240 Kilogrammes.

The traffic (amendment) rules 2008 provide for a schedule of fines for overloading for the offence of overloading 5000 kilogrammes or more but less than 6000 kilogrammes a fine of Ksh. 50,000/= on 1st Conviction and a fine of Ksh. 100,000/= on a second or subsequent Conviction.

It was not proved before the trial magistrate that the Accused persons were second offenders and neither did they admit so.

This Court has been presented with the record of proceedings in respect to case No. 436 of 2014 Mariakani wherein the Accused persons were (1) Jacob Maskath and (2) Cello Thermoware, these are two distinct and different persons and not related to the Accused persons.

It was wrong and irregular to fine the Accused persons Ksh. 100,000/= bearing in mind that there was no proof that they had previous Convictions.

I accordingly, alter revise the Sentence to that of Ksh. 50,000/= in default six months imprisonment for each of the Accused persons.

Kshs. 50,000/= for each Accused/applicant to be refunded to the depositors.

Ruling delivered dated and signed this **6th** day of **July, 2015**.

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M.MUYA

JUDGE

6TH JULY, 2015

In the presence of:-

Learned Counsel for the prosecution Miss Ogweno

Learned Counsel for the applicants absent

The Court Assistant Musundi

M. MUYA - JUDGE