

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL REVISION NO. 5 OF 2014

JAMES LUPU LUCHUNGURE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

REVISION

James Lupu Luchungure has cried out for mercy in his letter of 10th February 2014 and have his sentence of a fine of Kshs 10,000/= or in default three months imprisonment set aside and substituted by a non-custodial sentence.

The Applicant was convicted on his own plea of guilty to two counts -

Count I - failing to wear a helmet and reflecting jacket contrary to rule 25A(1) and (8) of the Traffic (*Amendment*) Rules 2009 (*made under the Traffic Act, Cap. 403 of the Laws of Kenya*).

Count II – the Riding a motor cycle on a public road without a driving licence contrary to Rule 25A(6) & (8) of the Traffic Amendment Rules 2009 (*made under the Traffic Act Cap. 403, Laws of Kenya*).

The punishment under Count I is a minimum of ten thousand shillings and a maximum of fifteen thousand shillings, and in default to imprisonment for a period not exceeding six months. The punishment under Count II is a fine of five thousand shillings or in default imprisonment for three months.

These are all mandatory provisions. Besides, the Applicant pleaded guilty, the facts were read to him, and he confirmed them. The plea of guilty was confirmed. As such Section 348 of the Criminal Procedure Code (*Cap. 75, Laws of Kenya*) limit the court's power either on revision or appeal from interfering from the findings of the lower court, except on the question of the legality and extent of sentence.

The charges sentence here were in order. In the circumstances, the court's hands are bound by the law.

I however direct the Probation Officer to conduct investigation of the applicant and similar prisoners and make appropriate recommendations on the treatment of such offenders, and submit such report within fourteen (14) days of this order.

Dated and signed at Nakuru this 4th day of March, 2014

M. J. ANYARA EMUKULE

JUDGE