



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL REVISION NO. 1 OF 2014

REPUBLIC

VERSUS

JULIUS SAMMY KATUMA APPLICANT

RULING ON REVISION

1. By a letter dated 29/1/2014, the Applicant, **Julius Sammy Katuma**, applied for a review of the proceedings and ruling in **Makueni Principal Magistrate Traffic Case No. 45 of 2014** pursuant to the provisions of **section 362 and 364** of the **Criminal Procedure Code**.
2. The Applicant was charged in **Makueni Principal Magistrate Traffic Case No. 45 of 2014** with the offence of failing to keep proper records of a driver contrary to **section 111(1)** as Read with **section 111 (2)** of the **Traffic Act Chapter 403 Laws of Kenya**.

The particulars of the offence were that on the 7th day of January 2014 at about 1400 hrs along **Tawa-Mbumbuni Road** in **Mbooni District**, within **Makueni County**, being the owner of a motor vehicle registration number **KBM 609 B Mitsubishi** minibus did fail to keep proper records of the driver of the said motor vehicle.

3. The Applicant pleaded guilty to the charge and was fined Kshs.5,000/= in default two (2) months imprisonment. The Applicant's counsel then applied for the release of the motor vehicle to the Applicant. The trial magistrate rejected the application and proceeded to make orders for the detention of the said motor vehicle at the police station pending the arrest of the motor vehicle's driver who was the accused in "**Traffic Case No. 44 of 2014**".
4. The Applicant's complaint is that the trial magistrate erred in failing to reconstitute the motor vehicle to the Applicant as provided for under **section 177** of the **Criminal Procedure Code**. The Applicant has further contended that his application was not replied to by the prosecution, yet the trial magistrate proceeded to make orders for the detention of the motor vehicle at the police station on the grounds that the driver of the said motor vehicle had absconded in "**Traffic Case No. 44 of 2014**".
5. Under **Section 362** of the **Criminal Procedure Code**:-

“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.”

6. The Applicant was charged under **Section 111** of the **Traffic Act** which provides as follows:-

Section 111 (1):-

“Any person who employs any other person to drive a motor vehicle shall keep a written record of the name, address and driving licence number of such other person.”

Section 111 (2):-

“Such record shall be preserved for a period of six months after the date when such person ceases to be employed as a driver, and shall be made available to any police officer on demand.”

Section 111 (3):-

“Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding one thousand shillings.”

7. Did the trial magistrate err in proceeding to make orders for the detention of the motor vehicle after the Applicant had been sentenced? It is apparent from the lower court record that the trial magistrate relied on the provisions of **section 107 of the Traffic Act Cap 403 of the Laws of Kenya** when the orders were made for the detention of the motor vehicle. **Section 107 of the Traffic Act** provides as follows:-

“It shall be lawful for any police officer to detain at a police station or other place of safety any vehicle which has been removed from a road or other public place under section 106 until such inquiries have been made by the police as they may think necessary in the circumstances of the case.”

It is noteworthy that the said provision refers to the police officers and inquiries made by police officers. The court is not mentioned anywhere in the said provision.

8. What about if any of the parties apply to the court within the traffic case for the release of the motor vehicle? While each case will depend on its own circumstances, in the case at hand, no motor vehicle was produced in court as an exhibit. There was therefore nothing for the court to release or retribute to the Applicant. Since the offence the Applicant was charged with did not require the production of the motor vehicle in court in the traffic case at hand, if the Applicant was aggrieved by the continued detention of the motor vehicle by the police he had other legal avenues available to him to seek redress.
9. The prosecution did not respond to the application made by the Applicant’s counsel in the case before the lower court. It was therefore not the duty of the trial magistrate to descend into the arena and make orders to safeguard the prosecution’s interests in **“Traffic Case No 44 of 2014”** which was a separate file. Requiring the Applicant to avail the driver in court is tantamount to transferring the legal duty of the police officers to the owner of the motor vehicle, thereby exposing the owner of the motor vehicle to double jeopardy. When the accused person fails to appear in court, warrants of arrest are issued and the duty to arrest such an accused lies squarely with the police.
10. With the foregoing, this court’s conclusion is that the orders for the detention of motor vehicle **KBM 609B in Makueni PMC Tr. 45 of 2014 - Republic –vs- Julius Sammy Katumba** pending the arrest of the driver are irregular and I hereby set aside the said orders. However, I hasten to add that this ruling does not in any way touch on the exercise of the powers of the police to detain the said motor vehicle as provided for under **section 107 of the Traffic Act** in relation to any other cases other than **Makueni PMC Tr. 45 of 2014**. Orders accordingly.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 12th day of March 2014.

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JUDGE