



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL REVISION CASE NO. 15 OF 2014

(ORIGINATING FROM KITUI TRAFFIC CASE NO.218/2014)

M M.....APPLICANT

VERSUS

REPUBLICRESPONDENT

REVISION

1. This file was opened and placed before me following a letter dated **25th June, 2014** by **A.G. Kibiru Ag. Chief Magistrate, Kitui Law Courts**. He was prompted to act as a result of a letter written to him by **Koki Mwova, the County Probation Officer, Kitui** who in the course of her duties in prison encountered a prisoner who turned out to be a **form two(2)** student at **[particulars withheld] Secondary School in Ikanga Mutomo Sub-county**.
2. The gist of the matter is that **M M** was charged with two (2) counts:-
 - i. Permitting the use of an insured motorcycle contrary to **Section 103 B (1) (3)** as read with **Section 103 (B) (1) (7)** of the third **Party Risk Insurance Act Cap 405 Laws of Kenya**.

Particulars of the offence being that on the **2nd day of June, 2014** at about **2.00am** along **Kitui Majengo** road at **Ithookwe** area in **Kitui County** being the owner or motor cycle registration number **KMCR 726B** make **Skygo**, permitted the use of the said motorcycle along the said road without certificate of insurance.

- ii. Permitting unlicensed driver contrary to section **103 B (1) (5)** as read with **Section 103 B (1) (7)** of the **Traffic Act Cap 403 Laws of Kenya**.

Particulars of the offence being that on the **2nd day of June, 2014** at about **2.00am** along **Kitui Majengo** road at **Ithookwe** area in **Kitui County** being the owner or motor cycle registration number **KMCR 726B** make **Skygo**, permitted the unlicensed driver to ride the said motorcycle along the said road.

3. He pleaded guilty. He was convicted and sentenced to pay a fine of **Kshs. 10,000/=** or serve **three (3)** months imprisonment on each count. Sentences were to run consecutively.
 4. I have examined the record in an endeavor to satisfy myself of the need to invoke powers

conferred upon me by **Section 362** as read with **Section 364** of the **Criminal Procedure Code**.

5. First and foremost looking at the way the plea was taken, the charge was read to the accused who replied thus:-

“**Count 1** – it is true

Count 2 – it is true”

To satisfy myself if the plea was unequivocal, I must consider the facts that were presented and whether the accused admitted the same. The proceedings were as follows:-

“*Court Pros:- facts as per charge sheet.*

The accused is a 1st offender

A.S. Lesootia

Ag. SRM

Court – accused convicted on his own plea of guilty.

A.S. Lesootia

Ag. SRM

Accused in mitigation –Nil”.

6. Prior to convicting an accused person the court ought to have facts of the case outlined to the accused in order for him to respond thereto. He must plead to the facts(*vide Section 207 of the Criminal Procedure Code*).
7. This is a case where facts of the case were not presented to the child. He was not given an opportunity to respond. The court could not purport to convict him on his own plea of guilty. What happened was prejudicial to him.
8. I have perused the Insurance (**Motor Vehicle Third Party Risks**) Act, Cap 405 of the **Laws of Kenya. Sections 103 B ((1) (3) or 103 B (1) (7)** quoted in the charge are non-existent. A conviction that was based on such a charge in law is a nullity.
9. This is a case where a birth certificate has been availed. It establishes that indeed the convict is a child. He was below the age of **18 years** at the time of being arraigned in court. It was a misdirection on the part of the court to convict him (see **section 189** of the **Children Act, 2001**). The trial magistrate was under a duty of carrying out a preliminary inquiry to establish the child’s age prior to reading the charge to him.
10. From the foregoing it is apparent that the plea of guilty entered was equivocal, and the conviction thereof a nullity; I therefore quash the conviction, set aside the sentence meted out and order immediate release of the minor.
11. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 2ND day of JULY, 2014.

L.N. MUTENDE

JUDGE