



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CRIMINAL REVISION NO. 4 OF 2013**

JOHN MASIRA ISOE ..... APPLICANT

-VERSUS-

REPUBLIC ..... RESPONDENT

**ORDER ON REVISION**

1. Pursuant to section 364(1) of the **Criminal Procedure Code**, and in thanking the Resident Magistrate Nyamira Law Court, Mr. Norbert Okumu, for reporting this matter to the High Court for purposes of Revision of his own decision, this court makes the following orders on Revision.
2. The sentence under Count I in Nyamira CM's Court Traffic Case No. 57 of 2013 that: *"Accused to pay fine of Kshs.20,000/= or serve 8 months in jail. Still under count 1 the law requires that for each excess passenger, the conductor, driver and owner of the vehicle be fined Kshs.5,000/=.* I therefore fine the accused Kshs.5,000/= in default he will serve 2 months in jail" is unlawful to the extent that it imposes a fine of an aggregate sum of Kshs.25,000/=, thereby offending the Proviso under section 100 (2) of the **Traffic Act** which is in the following terms:-

**"Provided that rules made under this Act may provide that a person who is guilty of an offence under this subsection shall be liable to pay a fine according to a prescribed scale, but so that no person shall be liable to pay a fine greater than the maximum provided by this subsection".**

The maximum fine for the offence under section 100(2) of the **Traffic Act** is Kshs.20,000/=.

3. In addition, the imprisonment term of 8 months in default of payment of the fine offends the guidelines given under section 28(2) of the **Penal Code** where in default of a fine exceeding Kshs.15,000/= but not exceeding Kshs.50,000/= the term of imprisonment should be 6 months.
4. Under Count III, the Resident Magistrate properly noted after the sentence, (and hence his report for purposes of revision) that the sentence provided for under section 61(4) of the **Traffic Act** is a fine not exceeding Kshs.10,000/= or to imprisonment for a term not exceeding 1 month.
5. It is also noted that the Court imposed the maximum sentences for a first offender contrary to judicial policy on sentencing as set out in the decisions of the Court of Appeal for Eastern Africa in *Josephine Arissol –vs- Republic* [1957] EA 447 and the High Court of Kenya (Porter Ag. J) in *Otieno –vs- Republic* [1983] KLR 295 that the general rule is that a maximum sentence should not be imposed on a first offender.
6. Accordingly, for the reasons set out above and taking note of the Prosecution's statement on the Accused upon conviction and the Accused's mitigation, the sentences are revised as follows:-
  - i. **Count I – Accused is fined Kshs.10,000/=, in default the Accused to serve a term of imprisonment for 2 months.**
  - ii. **Count III - Accused is fined Kshs.5,000/=, in default the Accused to serve a term of imprisonment for 1 month.**

**Dated and Signed at Kisii this 4<sup>th</sup> day of April, 2013.**

**EDWARD M. MURIITHI**

**JUDGE**