



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL REVISION NO. 12 OF 2011**

*(Arising from Traffic Case Nos. 318 of 2011 & 319 of 2011 of the Chief Magistrate's Court at Mombasa: T. Ole Tanchu – S.R.M.)*

**SIYARAM TRANSPORTERS .....APPLICANT**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**RULING**

By their letter dated 9<sup>th</sup> February 2011 **MESSRS MENEZES OLOO & CHATUR ADVOCATES**, have sought that the High Court do exercise its revisionary powers under S. 362 and 364 of the Criminal Procedure Code; with respect to the following two cases –

(1) TR 318/2011

REPUBLIC -VS- SIYARAM TRANSPORTERS

(2) TR 319/2011

REPUBLIC -VS- SIYARAM TRANSPORTERS

Since in each case the parties are the same and having perused the record I note that proceedings in both files were identical I will deal with the two matters jointly.

In each case plea was taken on 11<sup>th</sup> January 2011. The proceedings (which as I have already stated were identical) read as follows:

**“Charge read over and explained. Accused is hereby fined Kshs.50,000/- in default to serve 6 months imprisonment”**

The learned trial magistrate in both cases totally failed to adhere to the barest principles of law and procedure in recording the two pleas. Firstly the accused in each case was not allowed the very basic right of responding to the charge in total contravention of the provisions of S. 207(1) of the Criminal Procedure Code. The record does not show what response (if any) the accused made to the charge. After the plea is read the trial court simply proceeds to impose sentence. In other words the accused persons were condemned unheard. Secondly the facts of the charge were not read out to the accused as is required by law, to enable the accused confirm the correctness or otherwise of those facts.

Thirdly in neither case was a conviction rendered by the trial magistrate. This omission contravenes S. 207(2) of the Criminal Procedure Code, which provides that where an accused pleads guilty to a charge (which as stated earlier did not happen here) the court **shall** proceed to convict such an accused and pass sentence. The record in both cases shows that no such conviction was entered by the court. To proceed to pass sentence in the absence of a conviction is therefore a nullity which this court will not countenance. Such an illegal sentence cannot be upheld.

On the whole I find that the proceedings in both Tr. 318/2011 and Tr. 319/2011 were conducted in blatant disregard of both law and recognized procedure. The proceedings in both cases are illegal null and void and I quash the same. I hereby set aside both sentences and direct that any fines paid by the accused persons be refunded to them.

**Dated and Delivered in Mombasa this 2<sup>nd</sup> day of March 2011.**

**M. ODERO**

**JUDGE**