



REPUBLIC OF KENYA



**Mutua v Republic (Criminal Appeal E056 of 2025)
[2025] KEHC 14278 (KLR) (14 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14278 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL APPEAL E056 OF 2025
DK KEMEL, J
OCTOBER 14, 2025**

BETWEEN

CHARLES KIPROTICH MUTUA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the conviction and sentence of Hon D. Ogoti (CM)
delivered on 25th September 2025, in Bondo Traffic Case No. E045 of 2025)*

JUDGMENT

1. The appeal arises from the sentence of Hon. D. Ogoti (CM) dated 25/9/2025 in Bondo Traffic Case No. E045/2025 wherein the Appellant was ordered to pay a fine of Ksh200,000/= or in default to serve two years' imprisonment.
2. Aggrieved by the said sentence, the Appellant vide his Petition of Appeal dated 25/9/2025 raised one ground of appeal namely that the learned magistrate erred in law and in fact in sentencing the Appellant to a fine of Ksh200, 000/= in default to serve a sentence of two years' imprisonment which sentence is contrary to the Judiciary Sentencing Policy Guidelines 2023 and is excessive in the circumstances.

The Appellant therefore prays that the appeal be allowed, conviction be quashed and the sentence imposed be set aside or the court makes such further orders as it may deem just and expedient.
3. This being the first appellate court, its duty is well spelt out namely to re-evaluate and analyze the evidence tendered before the trial court and subject it to an independent analysis so as to arrive at its own conclusion as to whether or not to uphold the decision of the trial court. See *Okeno v Republic* [1972] EA 32.
4. A perusal of the lower court proceedings reveals that the Appellant had been charged with a traffic offence namely failing to maintain parts and equipment of a motor vehicle contrary to Section 55 (1)



as read with Section 58 (1) of the [Traffic Act](#) Cap 403 Laws of Kenya. The particulars were that on the 25/9/2025 at about 1000hrs at Bondo Koyucho along Bondo-Usenge Road in Bondo Sub County within Siaya County, being the driver of motor vehicle Reg No. KCS 165N make Scania Bus did drive the said motor vehicle along the said public road while fitted with one rear right worn out tyre.

5. The Appellant pleaded guilty to both the charge and facts and was subsequently convicted on his own plea of guilty. He was later ordered to pay a fine of Kshs200,000/= and in default to serve a sentence of two years' imprisonment and that the bus was to be released upon compliance.
6. Learned counsels for the parties canvassed the appeal by way of oral submissions.
7. Mr. Ojienda for the Appellant, submitted inter alia; that they rely on the Petition of the Appeal; that the sentence imposed is against the Judiciary's Sentencing Policy Guidelines; that reliance was placed in several authorities where fines in respect of this kind of offences range between Ksh10,000 and Ksh20,000/=; that the issue of proportionality of the crime was taken out of proportion by the trial magistrate since it only related to one worn out tyre while the rest were in good condition.
8. Mr. Soita, learned counsel for the Respondent, submitted inter alia; that the Appellant admitted to having committed the offence; that under Section 55 as read with Section 58 of the [Traffic Act](#), the maximum fines is Ksh400,000/= and that the fines imposed by the trial court was reasonable in the circumstances and that the Appellant's mitigation were considered; that the trial court exercised its discretion while imposing the sentence; that the Sentencing Policy Guidelines provide that certain parameters must be considered. For instance, there was need for public protection since lives of travelers were at risk and which calls for a deterrent sentence; that the danger posed by defective vehicles is real; that the appeal be dismissed and the sentence be upheld.
9. I have considered the lower court record and the oral submissions. It is not in dispute that the Appellant pleaded guilty to the charge laid against him under Section 55(1) as read with Section 58(1) of the [Traffic Act](#). It is noted from the Petition of Appeal that the Appellant seeks to have the conviction quashed and sentence set aside whereas the submissions of his counsel appear to dwell mainly on the need to interfere with the sentence. This court has been called upon to determine the appeal and which is based on the grounds raised in the Petition of Appeal. Learned counsel for the Appellant has not sought to amend the Petition of Appeal and the attendant prayers thereof. That being the position, this court will proceed to determine the entire appeal wholesomely.
10. This court will be guided by the provisions of Section 348 of the Criminal Procedure Code which provides as follows;

“No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence”.

The Appellant's appeal and prayers thereof must be analyzed in reference to the above provision. As the Appellant had pleaded guilty and was convicted accordingly, Section 348 aforesaid bars him from seeking to challenge the conviction. However, he can only challenge the extent and legality of the sentence. Looking at the submissions of counsel for the Appellant, it is clear that he is only challenging the sentence as he has pointed out that the sentence imposed by the trial court is against the Judiciary Sentencing Policy Guidelines 2023.



11. The relevant sections of the [Traffic Act](#) in this matter are as follows:

“Section 55(1) No vehicle shall be used on the road unless such vehicle and all parts and equipment thereof, including lights and tyres, comply with the requirements of this Act, and such parts and equipment shall at all times be maintained in such a condition that the driving of the vehicle is not likely to be a danger to other users of the road or to persons travelling on the vehicle.

Section 58(1) Any person who drives or uses on a road a vehicle in contravention of the provisions of Section 55 or Section 56 shall be guilty of an offence and liable to a fine not exceeding Ksh400,000/= or to imprisonment for a term not exceeding two years or to both.”

Provided that that rules under this Act may provide that a person who is guilty of an offence under Section 55 or 56 shall be liable to pay a fine according to a prescribed scale, and different scales may be prescribed for first offenders, and for second and subsequent offenders within a prescribed period, but so that no person shall thereby be liable to pay a fine greater than the maximum provided by this sub-section; and for the avoidance of doubt, it is declared that liability of a person to pay a fine on a prescribed scale shall not affect that person’s liability to imprisonment under this sub-section as an alternative to, in addition to, or in default of, the payment of a fine.

12. In Kenya, the proportionality of sentencing requires that the punishment should be appropriate to the gravity of the crime and the offender’s circumstances, a principle enshrined in [the Constitution](#) and the Sentencing Policy Guidelines (SPGs). The Judiciary uses the SPGs, including the 2023 revised version, to ensure sentences are proportionate, impartial, fair, consistent, and respect human rights, providing a framework to guide judicial officers on various factors like the nature of the offence and the offender’s character and circumstances. The Key Aspects of Proportionality in Kenyan Sentencing is as follows:

Constitutional Basis:

The principle of proportionality is rooted in [the Constitution](#) of Kenya 2010, which safeguards against cruel and inhuman punishment, providing a fundamental right to proportionality.

Sentencing Policy Guidelines (SPGs):

The SPGs, particularly the 2023 revised version, serve as a crucial reference tool for judges and magistrates to ensure sentences are proportionate and aligned with human rights standards.

Consideration of Offender’s Circumstances:

When determining a sentence, judicial officers are mandated by various statutes to consider the offender’s youth, character, home surroundings, health, and mental condition, as well as any extenuating circumstances.

Nature of the Offence:

The gravity of the crime and its objective circumstances must be taken into account to ensure the sentence is justifiable and proportionate.

Fairness and Consistency:

The SPGs aim to provide consistency and predictability in sentencing, preventing the disproportionate application of punishment and fostering accountability and transparency.



Application in Specific Cases:

The concept of proportionality has been applied in landmark cases, such as the Muruatetu case which dealt with mandatory death sentences for murder, although its application has been limited to capital offenses. Proportionality is crucial and must be considered by the courts during sentencing of offenders. It ensures that sentences are not unduly harsh or lenient, aligning the punishment with the severity of the crime. It also promotes fairness and equality within the justice system, ensuring similar crimes receive similar sentencing approaches. It upholds the fundamental right to dignity and freedom from cruel punishment, as guaranteed by *the Constitution*.

13. It is trite that sentencing is at the discretion of the trial court. In the case of Bernard Kimani Gacheru Vs R [2002] KLR 94 the Court of Appeal held that the sentence must depend on the facts of each case and that an appellate court will not easily interfere with sentence unless the sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle.
14. It is noted that the trial court duly considered the Appellant's mitigation circumstances and went ahead to take into account the fact that the defective part of the Appellant's bus posed great danger to the passengers on the road. Indeed, defective vehicles on our highways have posed great danger to travelers and other road users. It is not in dispute that the Kenyan highways are littered with blood and tears of travelers due to the upsurge of road accidents. Hence, the issue of the condition of vehicles on the roads is critical and that it is from that premise that the Appellant was handed the impugned sentence. It is further noted that the prosecution in the matter did not arrange to have the vehicle inspected so as to confirm the extent of defects thereon and go ahead to show that it was only the one rear tyre that was worn out. I find that it was necessary for an inspection report to have been made and presented to the trial court for consideration. Hence, the trial court only relied on the charge and particulars thereof without the benefit of an inspection report. It is also noted that the prosecution indicated that there were no records regarding the Appellant and thus he was treated as a first offender. The sentencing policy guidelines aforesaid (supra) are to be resorted to by courts when passing sentences. Learned counsels herein submitted on the issue of proportionality of the sentence as against the offence committed by the Appellant. Looking at the offence and circumstances of the offence and the fact the Appellant was a first offender and further that no inspection report was availed in the matter, it is my considered view that the sentence imposed by the trial court was manifestly excessive and thus the same must be interfered with. I find that a fine of fifty thousand shillings or in default to serve imprisonment for two years is reasonable in the circumstances.
15. In view of the foregoing observations, it is my finding that the Appellant's appeal partially succeeds. The sentence imposed by the trial magistrate dated 25/9/2025 is hereby set aside and substituted with a fine of Kenya shillings of fifty thousand (Ksh 50,000/=) and in default to serve imprisonment for two years. The bus to be released upon payment of the fines or completion of the sentence.

Orders accordingly.

DATED AND DELIVERED AT SIAYA THIS 14TH DAY OF OCTOBER 2025.

D.KEMEI

JUDGE

In the presence of:

N/A Charles Kiprotich Mutua.....Appellant



Ojienda.....for Appellant

Soita.....for Respondent

Maureen.....Court Assistant

