



**Republic v Wainaina (Traffic Case E237 of 2025)  
[2025] KEMC 23 (KLR) (11 February 2025) (Sentence)**

Neutral citation: [2025] KEMC 23 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
TRAFFIC CASE E237 OF 2025  
PA NDEGE, SPM  
FEBRUARY 11, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SIMON WAINAINA ..... ACCUSED**

**SENTENCE**

1. The accused person herein, Simon Wainaina, has been convicted upon own plea of guilty of the offences of Riding a Motor-cycle on a Public Road without a Driving License contrary to section 30(1) of the *Traffic Act* Cap 403 Laws of Kenya, punishable by Section 41 of the said Act; Failing to Display Certificate of Insurance contrary to Section 9(1) of the *Insurance Act* 405 Laws of Kenya; and Riding a Motor Cycle Without a Helmet Contrary to Section 103B (1) as read with section 103B(7) of the *Traffic Act*, as Amended in 2012, Cap 403 Law of Kenya, in the 3 counts herein.
2. He admitted that on 06/02/2025 at about 11.10pm along Nakuru-Mailisita road at Posho Mill area in Nakuru North sub-County within Nakuru County, being the rider of a motorcycle Reg. No. KMFT 376R make HAOJUE, he rode the said motorcycle on a public road without a driving license, without displaying a certificate of insurance against third party risks and without a helmet.
3. He is a first-time offender and has pleaded for forgiveness. I have looked at the charges and the penalty provisions. First, I do find that the charge in the second count is based on a none-existent or wrong provision of the law and to proceed to sentence the accused on it, shall obviously lead to a miscarriage of justice. I do hereby discharge the accused of the offence in the second count pursuant to the provisions of section 35(1) of the *Penal Code* as that is the only option available to me at this stage.
4. As for the offence in count 1, I find the penalty provisions therein to read as follows:
  41. Penalties under this Part



Any person who contravenes or fails to comply with any of the provisions of this Part shall be guilty of an offence and liable, where no penalty is specifically provided, on first conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three months, and on each subsequent conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or to both.

5. The accused being a first-time offender, I do hereby sentence him to a fine of Kshs. 1,500/= in default to served 14 days imprisonment in the first count. As for the 3<sup>rd</sup> count, I find that the same is punishable under the *Traffic Act* Minor Offences) Rules, 2016, which provides for a maximum of Kshs. 1,000/= . The accused being a first-time offender, should not be subjected to the maximum penalty no matter how low the sentence might appear, as was held in the case of Richard Ombati Kerage Vrs Republic [2008] eKLR in which the court held as follows:

As regards the appeal against sentence, the appellant was a first offender and was a fairly young man although his age could not be verified. He only said that he was eighteen years' old. A trial court should not sentence a first offender to the maximum sentence provided by the law unless there are exceptional circumstances that justify the same.

6. I do not find any exceptional circumstances herein that might make me depart from the general rule and I thus do hereby exercise my discretion and sentence the accused as follows:
- a. Count: Kshs. 1,500/- in default to serve 8 days imprisonment.
  - b. Counts 2 & 3: Discharged under section 35(1) of the *Penal Code*.  
R/A 14 days explained.

**DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 11TH DAY OF FEBRUARY ,2025**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of;

Court interpreter: Janet

Prosecution Counsel: Macharia

Accused: Present

