



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRREV/E004/2026

NORMAN NGANGA VS ODPP

RULING

1. The application was brought under certificate of urgency seeking inter alia stay of execution of sentence imposed in Traffic Case E109 of 2026 before Hon David Odhiambo and that the court call for and examine the record of proceedings in the above case and revise the sentence by reducing the fine of Kshs. 200,000 (or 60 days imprisonment) to a more proportionate and reasonable amount.
2. His grounds and his averments in his supported affidavit sworn on 15th January 2026 are that he was charged with the offence of driving a motor vehicle on a public road with dimensions exceeding the maximum provided contrary to sec 55 (2) as read with section 58 (1) of the Traffic Act in respect of motor vehicle registration number UAT 061W Mercedes exceeding by 0.65 metres and 0.55 metres. He states that he pleaded guilty to the charge and was convicted and sentenced to pay Kshs. 200,000 which he deems harsh and excessive. He faults the trial court for not considering that fines in traffic matters should be proportionate and not ruinous and also failed to consider the Sentencing Policy Guidelines. He was not averse to the fact that he posed no danger to the public. In conclusion he is apprehensive that his right to fair trial and proportionate punishment has been violated under article 50 of the constitution thus warranting this application.
3. Mr. Sirima on behalf of the state filed a grounds of opposition dated 27th January 2026 stating that the application is grossly incompetent as it offends



section 364 (5) of the Criminal Procedure Code since the applicant has the option of filing an appeal. He also elucidated that the applicant has not demonstrated any issue with the correctness, legality or propriety of the sentence passed by the trial court and that the fine is lenient.

Analysis and Determination

4. The most commonly cited case when it comes to revision is the case of [Martin Mavuti Kituyi v Republic HCCR. Revision No. 27 of 2013](#) where the court rendered itself as follows;

“... the very nature of revision as a discretionary remedy explains the policy underpinnings of Section 364(5) of the Criminal Procedure Code; that revision should not be a substitute for an appeal whatsoever or insisted upon by a party who has not filed an Appeal where one was provided for. Revision primarily serves to put right instances where a finding, sentence, order or proceedings of a lower court are tainted by incorrectness, impropriety, illegality or irregularity...”

5. In the case of [Muhinze v Republic \[2023\] KEHC 25896 \(KLR\)](#), the court held as follows:

“It is trite law that sentencing is discretionary. An appellate court cannot automatically interfere with the exercise of discretion by the trial court. An intervention on discretion is only justified when it is wrongly exercised such as when the court takes in irrelevant facts or leaves out relevant ones and it is automatic when the wrong sentence is imposed which is legally erroneous. (See [Wanjema v Republic \[1971\] EA 493](#) and [Diego v Republic \[1985\] KLR 621](#).)”

6. The gravamen in this matter is that the trial court was too excessive or harsh in imposing a fine of Kshs. 200,000 or 60 days imprisonment in default. Section 55 (2) of the Traffic Act states as follows:

“No motor vehicle the weight or dimensions of which laden or unladen exceeds the maximum weight or dimensions provided for such vehicles by rules made under this Act shall be used on a road.”

7. The sentencing provision which is section 58 (1) of the Traffic Act states as follows:

“Any person who drives or uses on a road a vehicle in contravention of the provisions of section 55, 56 or 57 or in accordance with the East African Community Vehicle Load Control Act, 2013, shall be guilty of an offence and liable to a fine not exceeding four hundred thousand or to imprisonment for a term not exceeding two years or to both:

Provided that rules under this Act may provide that a person who is



guilty of an offence under section 55, 56 or 57 or in accordance with the East African Community Vehicle Load Control Act, 2013, shall be liable to pay a fine according to a prescribed scale, and different scales may be prescribed for first offenders, and for second or 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 subsection; 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 subsection as an alternative to, in addition to, or in default of, the payment of a fine."

8. The grounds preferred do not point to any illegality, impropriety or irregularity in delivering the sentence. Instead, they appear to be more of grounds for appeal and is thus tantamount to prosecuting an appeal through the window. We have to shut the window and direct that the applicant follows the laid down procedure. The application is dismissed.
9. It is so ordered.

Dated, signed, and delivered in Open Court/Online through MS TEAMS, this ...5TH..... day of ...March..... 2026.

HON. LADY JUSTICE W. K. MICHENI

JUDGE

In the presence of:

Mr SIRIMA.....For the State

BeboraCourt Assistant

SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.
MOMBASA HIGH COURT
HIGH COURT CRIMINAL
DATE: 2026-03-09 00:23:10

