



**Khaemba v Republic (Criminal Revision 328 of 2024)
[2024] KEHC 6260 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6260 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL REVISION 328 OF 2024**

DK KEMEL, J

MAY 30, 2024

BETWEEN

FERDINAND KHAEMBA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein through his learned counsel Mr Nabibia has sent a letter dated 2.5.2024 pursuant to the provisions of section 362 and 364 of the [Criminal Procedure Code](#) as well as Article 165 (3) (6) and (7) of the [Constitution](#).
2. The Applicant's gravamen is inter alia; that he was arraigned before Sirisia Law Courts on traffic related charges to which he pleaded guilty; that the learned trial magistrate imposed a fine of Kshs. 20,000/- on each of the five counts or in default to serve two months imprisonment on each count and that the sentence were to run consecutively; that the fines imposed are excessive; that the trial court did not follow the correct procedure laid down in issuing of fines in traffic offences; that the trial court failed to consider that the applicant was a first offender.
3. The Applicant prayed for the following reliefs:-
 - i. Spent.
 - ii. Spent.
 - iii. The court do set aside the sentences and fines imposed by the trial court on 30.4.2024 and revise all the fines and sentences imposed and set the Applicant free as he was a first offender.
 - iv. Any other order deemed appropriate.
4. There is no response by the respondent.



5. I have considered the revision request as well as the record of the lower court. The power of revision is given to this court vide Article 165(6) (7) of the Constitution and section 362 and 364 of the Criminal Procedure Code, the gist of which is that the High Court has supervisory jurisdiction over subordinate courts and over any person, body or authority, exercising a judicial or quasi - judicial function but not over a superior court. The power of revision also entails calling for the record of any proceedings before any subordinate court or person, body or authority and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

The Applicant has approached the court to call for the record of the loser court and proceed to revise the sentences imposed. [The orders of revision are set out under section 364 of the Criminal Procedure Code as follows:-

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- “(i) In the case of a proceedings in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the high court may-
- a. In the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 354, 357 and 358 and may enhance the sentence;
 - b. In the case of any other order other than an order of acquittal, alter or reverse the order.
 - c. In proceedings under section 203 or 296 (2) of the *Penal Code*, the *Prevention of Terrorism Act*, the *Narcotic Drugs and Psychotropic Substance (Control) Act*, the *Prevention of Organized Crimes Act*, the *Proceeds of Crime and Anti Money Laundering Act*, the *Sexual offences Act* and the *Counter – Trafficking in Persons Act* where the subordinate court has granted bail to an accused person , and the Director of Public Prosecution has indicated his intention to apply for review of the order of the subordinate court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.
- (2) No order under this section shall be made to the the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:
- Provided that this sub sections shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
- (3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence



- (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
- (5) When an appeal lies from a finding, sentence or order and no order of appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.

The Applicant's gravamen is that the sentences imposed are harsh and now seeks the court to revise the order of the trial court as it was not in accordance with the provisions of the law creating the offences. The record shows that the Applicant was charged with five counts as follows:-

Count 1 : Driving a school bus on a public road without speed governor certificate contrary to Rule 41A (i) (b) (2) of the *Traffic Rules* Cap 403 laws of Kenya.

Particulars are that on the 29th day of April, 2024 at about 1050 hours along Chwele - Bungoma road, being the driver of a motor vehicle Reg. No. KBP 964Q Isuzu Minibus C/O Western Heights Academy – Kanduyi, did drive the said vehicle without speed governor certificate (Expired 28.4.2024).

Count 2: 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.

Particulars are that on the 29th day of April, 2024 at about 1050 hours along Chwele – Bungoma road being the driver of motor vehicle reg. No. KBP 964Q Isuzu Minibus C/O Western Heights Academy – Kanduyi did operate the said vehicle while fitted with cracked windscreen

Count 3: Operating a school bus without road service license contrary to section 26 (1) (7) of the *National Transport and Safety Authority Act* No. 33 of 2012.

Particulars are that on 29th day of April, 2024 at about 1050 hours along Chwele - Bungoma road being the driver of a motor vehicle registration number KBP 964Q Isuzu Minibus C/O Western Heights Academy – Kanduyi , did operate the said vehicle without road service license from the NTSA (expired 8/3/2024).

Count 4: Operating a school bus on a public road without inspection sticker contrary to section 17A (1) (3) of the *Traffic Act* Cap 403 Laws of Kenya.

Particulars are that on the 29th day of April, 2024 at about 1050 hours along Chwele - Bungoma road being the driver of a motor vehicle reg. No. KBP 964Q Isuzu Minibus did operate the said vehicle without inspection sticker. (expired 5/1/2022 as per inspection VC NO. G979353 Copy attached).

Count 5: Operating a school bus without PSV special badge contrary to section 103A (1) (7) of *Traffic Act* Cap 403 Laws of Kenya.

Particulars are that on the 29th day of April, 2024 at about 1050 hours along Chwele - Bungoma road being the driver of motor vehicle reg. No. KBP 964Q



Isuzu minibus C/O Western Heights Academy :- Kanduyi did operate the said vehicle without PSV special badge

6. It is noted that the learned trial magistrate imposed a fine of Kshs. 20,000/- on each count and in default to serve two months imprisonment and that the sentences were to run consecutively. It is these sentences that the Applicant has approached this court for revision. A perusal of the offences in the penalty provisions reveals the following:-
- i. Count 1- Any person who owns, drives or causes to be driver or has charge of a public service vehicle other than in accordance with the provisions of this part shall be guilty of an offence and liable-
 - a. In the case of a first conviction, to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding six months or both;
 - b. In case of a second or subsequent conviction, to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding one year or both.
 - ii. Count 2 – Any person who drives or used on a road a vehicle in contravention of Section 55 and 56 shall be guilty of an offence and liable to a fine not exceeding Kenya shillings four hundred thousand or to imprisonment for a term not exceeding two years or both.
 - iii. Count 3 - a person who contravenes the provisions of sub section 1 shall be liable on conviction to a fine not exceeding Kenya shillings three hundred thousand or to imprisonment for a term not exceeding five years or both.
 - iv. Count 4 – any person who contravenes or fails to comply with any of the provisions of this part shall be guilty of an offence and liable on first conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three months and in each subsequent conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a period not exceeding six months or to both.
 - v. Count 5 – a person who contravenes or fails to comply with the provisions of this section commits an offence and shall be liable upon conviction to imprisonment for a term not exceeding twelve months or to a fine not exceeding ten thousand shillings or to both.
7. From the foregoing, it is clear that the learned trial magistrate imposed fines in excess of what is provided for in the penalty provisions on counts one, four and five while those in counts two and three were within the limits proposed. It is also instructive that the Applicant is a first offender and hence the fines imposed ought to be the least as provided for. Consequently, the request for revision succeeds to that extent.
8. In the result, the Applicant's request for revision is allowed in the following terms:-
- a. The fines imposed by the learned trial magistrates dated 30.4.2024 on counts one, four and five are hereby set aside and substituted with a fine of ten thousand shillings (10,000)- on each of the said counts and in default to serve two months imprisonment.
 - b. The fines imposed on counts two and three shall remain undisturbed.
 - c. The sentences shall run consecutively

DATED AND DELIVERED AT BUNGOMA THIS 30TH DAY OF MAY 2024

D KEMEI



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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

In the Presence of :-

Ferdinand Wekesa Applicant

No appearance Maloba for Applicant

Miss Kibet for Respondent

Kizito Court Assistant

