



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

CRIMINAL APPEAL NO. 1 OF 2020

KEVIN SPENCER.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(An appeal arising from the original sentence in Criminal Case No. 869 of 2019)

in the Principal Magistrate's Court – Webuye Law Courts

by Hon. M. Munyekenye (RM) on 30/12/2019)

JUDGMENT

1. The Appellant Kevin Spencer was charged and convicted on his own plea of guilty in two counts. He had been charged with the offence of causing death by dangerous driving contrary to **section 46** of the **Traffic Act Cap 403 Laws of Kenya** in count I and the offence of riding a motorcycle on a public road without a driving license, contrary to **section 103(B)(5)** as read with **section 103(B)(7)** of the **Traffic Act CAP 403 Laws of Kenya** in count II. He was consequently sentenced to serve seven (7) years' imprisonment in count I and six months' imprisonment in count II. The jail terms were to run concurrently.
2. Being aggrieved, the Appellant filed the instant appeal which is against sentence only. In his mitigation he states that he is remorseful and seeks the court to allow him serve the remainder of his sentence on probation. Further that he is a first offender and the sole bread winner of his family, particularly his younger siblings, since their mother has since died.
3. The Respondent filed written submissions through learned Principal Prosecution Counsel Mr. Ahindukha, who conceded the appeal on sentence stating that the State had no objection to the Court relooking at the severity of the sentence imposed on the Appellant. He stated that the Appellant had shown remorse, and that by pleading guilty to the offence, he had saved the court's time.
4. The court is therefore being called up to examine whether the sentence imposed upon the Appellant was harsh in the circumstances, to warrant interference with the discretion of the Trial court on sentencing. I am alive to the fact that sentencing is essentially an exercise of discretion by the trial court, and that an appellate court will only interfere with the sentence if it is demonstrated that in passing the sentence, the trial court acted upon wrong principles, overlooked some material factors, or the sentence itself is manifestly excessive in view of the circumstances of the case. (See – **Ogolla s/o Owuor vs. Republic [1954] EACA 270** and **Patrick Muli Mukutha vs. Republic [2019] eKLR**).
5. In count I, the Appellant was charged under **section 46** of the **Traffic Act** which provides that upon conviction, one is liable to imprisonment for a term not exceeding ten (10) years. In the instant case, the Appellant was sentenced to seven (7) years' imprisonment.
6. Whereas a custodial sentence can be deemed appropriate in the circumstances considering that a life was lost, the seven (7) years' imprisonment term may be said to be excessive in view of the fact that the Appellant was remorseful, a first time offender and pleaded guilty to the offence thereby saving the court's time. These factors qualify as mitigating factors under **clause 23.8** of the **Sentencing Policy Guidelines** and have an impact on the custodial sentence imposed as stipulated under **clause 23.9** of the Guidelines.
7. In respect of count II, I note that under **section 103(B)(5)** as read with **section 103(B)(7)** of the **Traffic Act** under which the Appellant was charged, upon conviction one is liable to a fine not exceeding ten thousand shillings or, in default of payment, to imprisonment for a term not exceeding twelve (12) months. In the instant case, the trial court only imposed an imprisonment term without the option of a fine, in disregard of the provisions of the sections under which the Appellant was charged.

