



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MILIMANI**

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO.209 OF 2019**

BERNARD NGATIA WACHIRA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

**RULING**

The Applicant, Bernard Ngatia Wachira was convicted of the offence of **causing death by dangerous driving** contrary to **Section 46** of the **Traffic Act**. The trial court found that the prosecution had established to the required standard of proof that the Applicant had on 23<sup>rd</sup> July 2018, while being a driver of motor vehicle registration No.KCJ 813X, drove the said motor vehicle along Waiyaki Way in Nairobi County in such a dangerous manner that he caused the death of Nancy Ambuya Mutuli, a pedestrian. The Applicant was sentenced to pay a fine of Kshs.400,000/- or in default serve two (2) years imprisonment. He was also convicted of a second count of driving an unroadworthy vehicle contrary to **Section 30(1)** as read with **Section 30(7)** of the **National Transport and Safety Authority Act**. He was sentenced to pay a fine of Kshs.100,000/- or in default to serve six (6) months imprisonment. If the Applicant failed to pay the imposed fines, the default custodial sentences were ordered to run consecutively.

The Applicant was unable to pay the fines imposed. He is serving the default custodial sentences. He was aggrieved by the sentence that was imposed on him by the trial court. He filed an application before this court to have the sentence revised. In essence, the Applicant pleads with the court to revise his sentence on the grounds that the same was harsh and excessive in the circumstances. He states that he was the sole breadwinner for his family. All his children are school going. His wife is a housewife and solely depends on him for sustenance. He told the court that the trial court did not take into consideration the fact that he was in remand custody for seven (7) months prior to his conviction. His mother was elderly and diabetic. He had learnt his lesson in the period that he has been in prison. He urged the court to exercise leniency on him.

Ms. Njuguna for the State opposed the application for review of sentence. She submitted that the Applicant drove a defective motor vehicle into a public road and thereby caused the death of a pedestrian. She submitted that the trial court had taken into account the Applicant's mitigation before she sentenced him. The circumstance in which the accident occurred precludes this court from favourably considering the sentence that was meted on the Applicant. The conduct of the Applicant after the accident and during trial indicated that he was not remorseful. Learned State Counsel urged the court not to interfere with the sentence that was imposed by the trial court.

The Applicant's application essentially seeks the exercise of this court's discretion in sentencing. This court can only interfere with the exercise of sentencing discretion by the trial court if it determines that that discretion was wrongly exercised. The Court of Appeal in **Ahmad Abolfathi Mohammed & Another –vs- Republic Criminal Appeal No. 135 of 2016** (unreported) held at Page 25 thus:

***“As what is challenged in this appeal regarding sentence is essentially the exercise of discretion, as a principle this Court will normally not interfere with exercise of discretion by the court appealed from unless it is demonstrated that the court acted on wrong principle; ignored material factors; took into account irrelevant considerations; or on the whole that the sentence is manifestly excessive. In Bernard Kimani Gacheru v. Republic, Cr App No.188 of 2000 this Court stated thus:***

***“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that 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. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, any one of the matters already stated is shown to exist.”***

In the present application, it was clear to the court that the trial court took into consideration all the applicable principles of the law in determining the sentence that was meted on the Applicant. It is not lost to this court that a human life was lost as a result of the Applicant's careless and negligent driving. However, this court notes that the Applicant has been in lawful custody for nearly two years. During this period, the Applicant has usefully applied himself while in prison. This court formed the view that during the Applicant's incarceration, he has learnt his lesson and has sufficiently been punished.

In the premises therefore, this court holds that the custodial sentence imposed on the Applicant shall be commuted to the period served. The default custodial sentences that the Applicant is currently serving is commuted to the period served. He is ordered set at liberty forthwith and released from prison unless otherwise lawfully held. It is so ordered.

**DATED AT NAIROBI THIS 29<sup>TH</sup> DAY OF JULY 2020**

**L. KIMARU**

**JUDGE**