

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 20 OF 2019

MATHEKA KILONZO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant was charged with the offence of causing death by dangerous driving contrary to Section 46 of the Traffic Act, Cap 403 Laws of Kenya. It was alleged that on 14th April, 2014 at around 6.00 am along Eastern bypass near Transami area being the driver for Motor vehicle Reg. No. KBC 078G make Isuzu Lorry drove the said vehicle in a dangerous manner and caused the death of a pedestrian one Daisy Akinyi.
2. After the trial, he was sentenced to pay a fine of Kshs. 200,000/= in default serve three years imprisonment. He was further ordered to compensate the father of the deceased in default of which he serves a further two years imprisonment. The latter sentence was ordered to run consecutive to the first. The learned trial magistrate further directed that the compensation was recoverable as a civil debt in the event a civil suit is filed.
3. Before this court, he asked the court to set him free because he only had two months to complete his sentence, which application the Respondent did not oppose.
4. As regards the first limb of the sentence, the same was illegal in that the default sentence did not accord with **Section 28(2) of the Penal Code**. Accordingly, I set aside and substitute it with an order that the Applicant shall pay a fine of Kshs. 300,000/= in default serve 1 year imprisonment.
5. As regards the second limb of the sentence, my view is that it was not properly applied. The learned magistrate noted that the compensation could as well be recoverable in a civil suit. Thus, ordering compensation in a criminal case was tantamount to subjecting the Applicant to double jeopardy. He had already been subjected to a punishment as the law provides by the penalty under Section 46 of the Penal Code. A further punishment that is recovered in a civil suit was by no means illegal. To that extent, I set aside the order of compensation.
6. In sum, I find that the Applicant has served sufficient sentence. I order that he be forthwith set free unless otherwise lawfully held.

Dated and Delivered at Nairobi This 25th day of November, 2019.

G.W.NGENYE-MACHARIA

JUDGE.

In the presence of:

1. Applicant in person.
2. M/s Akunja for the Respondent.