



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO. 290 OF 2019**

**KENNEDY KIMAN NJERU.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Applicant was charged with causing death by dangerous driving contrary to **Section 46 of the Traffic Act, cap 403 Laws of Kenya**. It is alleged that on 15<sup>th</sup> February, 2019 at around 5.30 pm along Juja Road within Nairobi County while driving motor vehicle Registration No. KBX 055S drove the said motor vehicle in a dangerous manner and caused the death of Peter Shannel Kahero. He was convicted after a trial vide **Milimani Traffic Case No. 5588 of 2019** and sentenced to pay a fine of Kshs. 400,000/= in default serve three years imprisonment.

2. The Applicant has approached this court seeking a review of the sentence. He seeks leniency on ground that he is the bread winner of the family. Ms. Akunja for the Respondent did not oppose the application.

3. It is trite the offence the Applicant was accused of is very serious and a stringent sentence is warranted. However, where a fine is imposed, the default sentence must accord with **Section 28(2) of the Penal Code**. That means that the sentence imposed was illegal.

4. I accordingly set aside the sentence and substitute it with an order that the applicant shall pay a fine of Kshs. 400,000/= in default serve one year imprisonment. It is so ordered.

**Dated and Delivered at Nairobi This 25<sup>th</sup> day of November, 2019.**

**G.W.NGENYE-MACHARIA**

**JUDGE.**

**In the presence of:**

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