



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 6 OF 2015**

**WALTER OUMA WABWIRE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(From the original conviction and sentence in Traffic case No.1063 of 2014 of the Chief Magistrate's Court at Busia by Hon. D.O Ogolla-  
Chief Magistrate)*

**JUDGMENT**

1. The appellant, **WALTER OUMA WABWIRE**, was convicted of the offence of causing death by dangerous driving contrary to section 46 of the Traffic Act CAP. 403 Laws of Kenya.
2. The particulars of the offence were that on 11<sup>th</sup> July 2014 along Ojamii-Malaba road within **BUSIA** County, being the rider of motor cycle registration number **KMDE 607F**, did ride the said motor cycle on the said road at a speed and in a manner which was dangerous to the public having regard to all circumstances of the case including the nature, condition and use of the road and the amount of traffic which was reasonably expected to be on the road thereby causing the death of **DUNCAN OPONDO**, a male juvenile.
3. He was convicted after trial and sentenced to serve five years imprisonment.
4. He now appeals against the sentence which he claims was harsh and excessive.
5. The state conceded the appeal through Mr. Owiti, the learned counsel.
6. The facts of the prosecution case were briefly as follows:

At about 4.30 pm on the material day, the appellant rode motor cycle registration number **KMDE 607F** at high speed and knocked down a child who was walking along the road. The child sustained injuries and succumbed to the injuries while undergoing treatment.

7. Section 46 of the Traffic Act provides as follows:

*Any person who causes the death of another by driving a motor vehicle on a road recklessly or at a speed or in a manner which is dangerous to the public, or by leaving any vehicle on a road in such a position or manner or in such a condition as to be dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road and the amount of traffic which is actually at the time or which might reasonably be expected to be on the road, shall be guilty of an offence whether or not the requirements of section 50 have been satisfied as regards that offence and be liable to imprisonment for a term not exceeding ten years and the court shall exercise the power conferred by Part VIII of cancelling any driving licence or provisional driving licence held by the offender and declaring the offender disqualified for holding or obtaining a driving licence for a period of three years starting from the date of conviction or the end of any prison sentence imposed under this section, whichever is the later.*

The maximum penalty for this offence is 10 years imprisonment.

9. An appellate court would interfere with the sentence of the trial court only where there exists, to a sufficient extent, circumstances entitling it to vary the order of the trial court. These circumstances were well illustrated in the case of **NILSSON vs. REPUBLIC [1970] E.A. 599**, as follows:

*The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might*

*have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in JAMES Vs. REX (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R Vs. SHERSHEWSITY (1912) C.CA 28 T.LR 364.*

10. I agree the sentence in this case was manifestly harsh bearing in mind that the appellant was a first offender. He was also remorseful. The appellant has served slightly more than 3 years. In my opinion, this is adequate punishment for the offence. I therefore reduce the sentence to the period served.

**DELIVERED and SIGNED at BUSIA this 19<sup>th</sup> day of April, 2018**

**KIARIE WAWERU KIARIE**

**JUDGE**