



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL APPEAL NO.31 OF 2016

GILBERT KIPRONO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against the conviction and sentence in Kericho CM Cr. No. 1630 of 2015 by Hon. B. Limo (RM) dated 22nd November 2016)

JUDGMENT

1. The appellant was charged in Kericho Principal Magistrate's Court Case No. 1630 of 2015 with three counts related to an accident that occurred on 17th July 2015. The charge under count 1 was causing death by dangerous driving contrary to section 46 of the Traffic Act, Cap 403 Laws of Kenya. The particulars of the offence were that on the 17th day of July 2015 at about 12.30 p.m along the Kericho-Sotik road at corner "C" area within Kericho County being the driver of a motor vehicle registration number KBZ 974 X, Make Nissan Vannet matatu did drive the said motor vehicle on the said public road in a manner which was dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and amount of traffic which was actually at the time or which might be reasonably expected to be on the road by over speeding (sic) and thereby losing control of the said vehicle which overturned and rolled several times causing the death of Grace Chepkorir Marusoi.
2. Count II charged that on the said date and time and in the same manner as in count I, the appellant caused the death of Raeli Chepkemioi Bett.
3. Count III charged the appellant with the offence of driving a defective motor vehicle contrary to section 55 (1) as read with section 58 (1) of the traffic Act, Cap 403 Laws of Kenya. The particulars of the offence were that on the 17th day of July 2015, at about 12.30 p.m. along the Kericho-Sotik road at Corner "C" area in Kericho County, being the driver of a motor vehicle registration number KBZ 974 X Nissan Vannete Matatu, drove the said motor vehicle on a public road while fitted with a defective governor vide certificate of examination and test of vehicle receipt No. VTA No. 654633.
4. The appellant first took his plea on 18th September 2015 when he pleaded not guilty to all the charges. The charges were read to him in Kiswahili, which the court record indicated that he understands, and he responded in Kiswahili that the charges were false.
5. The matter was then fixed for hearing. However, on 18th November 2016, when the accused was presented to court following his arrest after he failed to appear for the hearing on at least 10 occasions, the accused applied to change his plea. The plea was taken on 22nd November 2016, when the record indicates that the interpretation was from English-Kipsigis. However, the accused then responded in Kiswahili and pleaded guilty to all the three counts facing him. The facts relating to the accident were then read to the accused, and he stated that the facts are correct.
6. The court therefore proceeded to convict him on his own plea of guilty, and to sentence him to imprisonment for 7 years on count 1 and 11, the sentences in these two counts to run concurrently. In respect of count III, the court sentenced the appellant to a fine of Kshs. 50,000/- and in default, six (6) months in jail.
7. Dissatisfied with the decision and sentence of the trial court, the appellant filed the present appeal. His Learned Counsel, Mr. Motanya, filed supplementary grounds of appeal on 13th July 2017, dated the same date, which he relied on at the hearing of this appeal.
8. Mr. Motanya submitted that the appellant's plea was not totally unequivocal and around, and that the sentence meted out was too harsh. While the sentence on counts I and II were to run concurrently, nothing was stated with regard to count 3. His submission was that the sentence on the said count should have been addressed specifically, and he prayed that the appeal be allowed and the sentence set aside or a retrial be ordered.

9. In response, Ms. Keli for the state submitted that the language that was used in court was a language that was well understood by the appellant. The record indicated that the language used was Kiswahili, which the record indicates is a language the appellant understood. The facts were read in court, the exhibits produced and the appellant confirmed that the facts were correct as read. He had also submitted in mitigation which, according to Ms. Keli, shows that he followed the proceedings. Had he not understood the proceedings, that was the point at which he should have raised the issue. For him to raise the issue that the plea was equivocal was an afterthought, and the appeal should be dismissed as it lacks merit.

10. I have considered the submissions of Mr. Motanya for the appellant and Ms Keli for the State. I agree with the submissions by Ms. Keli that under section 348 of the Criminal Procedure Code, no appeal shall be allowed where a person has pleaded guilty except on the legality of the sentence. I would have been inclined to consider the appeal had I been able to find that the plea of guilt by the accused in this case was unequivocal.

11. However, I note that the appellant had initially pleaded not guilty when the plea was read to him when he was first presented before the court, and the case had been set down for trial. He had later changed his plea, and the charges had been read to him in Kiswahili, which the record indicates he understood. He had pleaded guilty to the charges, and had confirmed that the facts were true when they were read to him. In the circumstances, I am not satisfied, as argued by Mr. Motanya, that the plea was equivocal.

12. That being the case, I would only interfere with the sentence meted out by the trial court if it was illegal. However, the sentence provided under section 46 of the Traffic Act under which the appellant was charged is a sentence that does not exceed 10 years. He was sentenced to 7 years on each of the two counts of causing death by dangerous driving, the sentences to run concurrently.

13. From the facts which he admitted to be correct, two lives were lost as a result of the manner in which he drove the vehicle he was in control of, a public service vehicle. I am satisfied that the sentence meted out on these two counts was legal and reasonable, and I find no reason to interfere with it.

14. With respect to the count III, Mr. Motanya complains that it should have been specifically addressed. My reading of the record indicates that the court was quite clear in its sentencing. The appellant was sentenced to a fine of Kshs. 50,000/- or six months imprisonment on this count. The fact that the court was clear that only counts I and II would run concurrently makes it clear that the third count would be a consecutive sentence if the fine was not paid.

15. In the circumstances, I find the appeal to be without merit, and it is hereby dismissed and the conviction and sentence upheld.

Dated, Delivered and Signed at Kericho this 30th day of May 2018.

MUMBI NGUGI

JUDGE