



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
CRIMINAL APPEAL NO. 33 OF 2014

JEREMIAH KIPKORIR TARUS.....APELLANT

VERSUS

REPUBLIC.....RESPONDENT

(An Appeal from the Judgment of the Principal Magistrate Honourable B. Limo

in Kapsabet Traffic Case No. 239 of 2011, dated 4th December 2013)

JUDGMENT

1. The appellant *Jeremiah Kipkorir Tarus* was charged with the offence of causing death by dangerous driving contrary to *Section 46* of the *Traffic Act*. It was alleged that on 22nd January, 2011 at about 6p.m at Kapsisiywo along Kapsabet-Kaiboi road in Nandi County, the appellant dangerously drove motor vehicle registration number KAA 644U and caused the death of *Kennedy Kipkogei Serem*.

2. After a full trial, the appellant was convicted of the offence and was sentenced to 7 years imprisonment. His driving licence was also cancelled for three years with effect from the date of completion of sentence.

3. The appellant was aggrieved by the sentence imposed upon him by the trial court hence this appeal. In his petition of appeal and in his oral submissions while arguing the appeal, the appellant beseeched the court to review and reduce the sentence to the term already served or substitute it for a non-custodial sentence on grounds that he was a first offender; that he was a law abiding citizen and never intended to cause the accident in question; that he was remorseful and if his appeal was allowed, he would abandon his work as a driver and engage in other forms of employment to ensure that he never caused another accident.

4. The appeal is opposed by the state. Learned prosecuting counsel *Ms Mokuu* urged the court to uphold the sentence as it was lawful; that the sentence was not excessive considering that a life was lost due to the careless actions of the appellant.

5. I have considered the grounds of appeal, the record of the lower court and the submission's made by the appellant and the state.

I wish to start by observing that it is settled law that sentencing is at the discretion of the trial court. But that discretion must be exercised judiciously in accordance with the law and taking into account the

particular facts and circumstance of each case.

6. The legal parametres within which an appellate court can interfere with a sentence imposed by a trial court were well laid out in the case of ***Macharia V Republic (2003) KLR 115*** where the Court of Appeal held as follows;

“The court does not alter a sentence on the mere ground that if the member 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 v R, (1950) 18 EACA 147 “it is evident that the judge has acted upon some wrong principles or overlooked some material factors”. To this we would also add a third criterion namely, that the sentence is manifestly excessive in view of the circumstances of the case:..”

7. It is significant to note that in this case, the appellant was convicted of a traffic offence as opposed to a criminal offence. In ***Wanjema V Republic (1971) EA 493,*** the appellant had been convicted of the offence of causing death by dangerous driving. The court found a sentence of imprisonment of five years to be manifestly excessive and reduced it to a sentence of nine months. The court in considering the factors that a trial court ought to consider when sentencing a traffic offender in a case such as the one that was before the trial court expressed itself as follows;

“The issue as to whether a driver was deliberately reckless, careless, momentarily inattentive or simply doing his incompetent best is highly relevant to the question of sentence it is true: R. v Evans, (1962) 3 All E.R 1086, but once imprisonment has been resolved upon the court must in assessing its term bear in mind (with all other relevant factors) that the accused is not ordinarily a criminal in the narrow sense of the word. In any case the sentence is manifestly excessive in all the circumstances. The courts in this country should do all within their power to keep death off the roads but this purpose will best be achieved by ordering the suspension or cancellation of the offender’s driving licence for a substantial period of time rather than by imposing inordinately long prison sentences”.

8. The court proceeded to cite with approval the case of ***R V Eneriko Sempala (1936) 3 EACA 23*** where the Court of Appeal for Eastern Africa held that if a term of imprisonment was to be regarded as a deterrent, a sentence of three years should be adequate.

9. In this case, the record of the trial court shows that the appellant was a first offender and that in his plea in mitigation, he sought forgiveness. The trial magistrate when passing sentence does not appear to have considered the fact that the appellant was a first offender. This was a relevant factor which the trial court apparently failed to take into account.

10. I am alive to the fact that *Section 46* of the *Traffic Act* which creates the offence with which the appellant stands convicted attracts a maximum penalty of 10 years imprisonment meaning that a sentence of seven years was lawful as correctly submitted by *Ms Mokuu* for the state.

However, even considering that the appellant was convicted of a serious traffic offence in which a life was lost, it is my view that a sentence of seven years imprisonment for a first offender was harsh and manifestly excessive. In the circumstances of this case, I find that there is good reason to interfere with the sentence imposed on the appellant by the lower court.

11. The trial court’s record shows that the appellant was convicted on 4th December, 2013. This means that to date he has been in prison for about 2 ½ years. Imprisonment for this period of time is in my view sufficient punishment for the offence that the appellant committed.

12. In the result, I allow the appeal, set aside the sentence of seven years imprisonment imposed by the trial court and reduce it to the period already served. The appellant shall be released forthwith unless otherwise lawfully held.

It is so ordered.

C.W GITHUA

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 20th day of July, 2016

In the presence of:

The appellant

Miss Mokuia for the state

CC: Lobolia