

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

HCCRA NO. 2 OF 2013

BETWEEN

ROBERT ODEYO ODERO APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal arising from the original conviction and sentence of Homa Bay CM'S TR. NO. 371 of 2010 by Hon. S. Ongeru, Ag PM dated 25th January 2013)

JUDGMENT

1. The appellant, Robert Odeyo Odero, was charged with the offence of causing death by dangerous driving contrary to **section 46** of the **Traffic Act** and the offence of driving a vehicle without a driving license contrary to **section 30(1)** of the **Traffic Act**. He was tried and convicted on both counts. On the former count, he was sentenced to serve a term of 7 years imprisonment and on the latter count he was fined Kshs.3,000/= in default 3 months imprisonment. Both sentences were to run concurrently.
2. He now appeals against the conviction and sentence. However, in his petition he appeals against the sentence. He states that the sentence is excessive as he is the sole breadwinner for his wife and one child. He also requests that the court should also reduce his sentence as he is sick, requires treatment and in the circumstances, a non-custodial sentence would be appropriate.
3. The State opposes the appeal on the ground that the sentence is neither harsh nor excessive.
4. As this is an appeal against the sentence, the appellate court is bound to accept the decision of the subordinate court unless the court below overlooked material facts or factors, took into account irrelevant facts or acted on the wrong principles.
5. The basis of the conviction was that the appellant without authority of the owner of the motor vehicle, drove a vehicle recklessly from a petrol station, crossed the road and roamed into a shop thereby causing death. These facts show that the appellant was not even authorized to drive. The learned Magistrate, in sentencing him, took these facts into account and the fact that he was a first offender. The maximum penalty prescribed for the 1st count under **section 46** of the **Traffic Act** is 10 years imprisonment while for the 2nd count it is 3 months imprisonment.
6. Taking all these factors into account, I find no reason to interfere in the sentence. The sentence is therefore affirmed and as a result the appeal is dismissed.

DATED and DELIVERED at HOMABAY this 17th DAY OF JUNE 2014

D. S. MAJANJA

JUDGE