



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL APPEAL NO. 392 OF 2009**

**FRANCIS NG'ANG'A MWANGI .....APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in Criminal Case No. 51304 of 2006 of the Chief Magistrate's Court at Nairobi by G.C. Mutembei – Chief Magistrate)*

**JUDGMENT**

The appellant, **FRANCIS NG'ANG'A MWANGI**, was convicted for the offence of Causing Death by dangerous driving. Thereafter, the learned trial magistrate sentenced the appellant to 5 years imprisonment. The court also ordered that the appellant be disqualified from driving for 3 years.

When canvassing his appeal before me, the appellant made it clear that he was not challenging the conviction. He was only asking the court to review the sentence, saying that he had been reformed when in prison custody.

The appellant asked the court to order that he should be sentenced to probation.

In answer to the appeal, Miss Maina, the learned state counsel, submitted that the sentence handed down was very light. She reminded the court that one passenger died and other passengers suffered serious injuries resulting in their being hospitalized for 2 weeks each.

In reply, the appellant told the court that it was not of his making that the accident took place. Indeed, even he sustained some injuries in the accident.

Bearing in mind the fact that the appellant made a conscious decision not to challenge his conviction, I find that he cannot thereafter make submissions which have any bearing on the said conviction.

By suggesting that the accident was not of his own making, the appellant is saying that the learned trial magistrate erred when she held as follows;

***“Arising from the above I find that there is overwhelming evidence that accused solely caused the accident, and as a result the deceased suffered fatal injuries.”***

Having chosen not to challenge his conviction, it was not open to the appellant to cast any aspersions on the above-cited finding of the trial court.

Whilst it is appreciated that road-users may be involved in accidents, in this instance, the appellant was overtaking other vehicles, but was unable to get back to his side of the road on time. He is said to have been driving fast.

Under **section 46 of the Traffic Act**, the offence of Causing Death by dangerous driving attracts a penalty of imprisonment for 10 years.

Therefore, the sentence of 5 years imprisonment was lawful. It was certainly not excessive. I find no reason, in law, to interfere with it.

Accordingly, the appeal is dismissed. I uphold both conviction and sentence.

**Dated, Signed and Delivered at Nairobi, this 15th day of February, 2012.**

**FRED A. OCHIENG**  
**JUDGE**