



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**

**MISCELLANEOUS CRIMINAL APPLICATION 98 OF 2012**

**EVANS GITONGA WANGO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The applicant **Evans Gitonga Wango**, has brought a petition by way of Chamber Summons dated 19<sup>th</sup> April 2011. In his petition he states that he is dissatisfied with the decision of the Honourable trial magistrate in Limuru Chief Magistrate's **criminal case No. 196 of 2010**. In the stated case the applicant was convicted on two counts of causing death by dangerous driving and sentenced to serve five years imprisonment. In count I and one year imprisonment in count II. The sentences were ordered to run consecutively.
2. The grounds of the petition are that the applicant is the sole bread winner of his family, that the court should have considered other forms of sentence other than a custodial sentence and that therefore this court be pleased to review or vary the sentence imposed on the applicant by the trial court.
3. In his oral submissions the applicant told the court that he was a first offender who was remorseful and had sought forgiveness from the almighty God and from the court and that it was not his wish to cause the accident.
4. In answer, Miss Maina the learned state counsel, opposed the petition. She submitted that life was lost as a direct result of the carelessness of the applicant, who not only drove an un-roadworthy motor vehicle on the fateful day, but also overtook other motor vehicles in the face of oncoming traffic.
5. Miss Maina submitted that the lives of the families who had lost their bread winners would never be the same again and urged the court to dismiss the application. She however conceded that the sentences could run concurrently.
6. I have perused the lower court record in which the learned trial magistrate found that the applicant was over speeding, and was in the process of overtaking a lorry and a Nissan matatu both of which had been flagged down by traffic police on duty at the scene of the accident. The skid marks which started in the middle of the lane leading towards Nairobi, and continued across the opposite lane leading to Mai Mahiu up to where the motor vehicle hit the deceased, support the prosecution evidence that the applicant was speeding at the time of the accident.
7. His recklessness did result in the loss of the life of P.C. Charles Muchiri Runo who was one of the traffic officers on duty at the scene. The vehicles ahead of the applicant had slowed down in response to the direction of the traffic officers and were getting off the road, but it appears that the applicant was not about to stop or even slow down.
8. I therefore respectfully agree with the learned trial magistrate and the learned state counsel, that the

applicant's manner of driving was reckless and dangerous. The sentences imposed upon the appellant are lawful and reflect the gravity of the offences for which he was convicted. **I dismiss the appeal**, and uphold the sentences as imposed.

**9.** I however order that the sentences will **run concurrently**, to that extent only does the appeal succeed.

**SIGNED DATED** and **DELIVERED** in open court this **21<sup>st</sup>** day of **June 2012**.

**L. A. ACHODE**

**JUDGE**