



REPUBLIC OF KENYA

High Court at Mombasa

Criminal Appeal 143 of 2012

BENSON MWANGANGI MUSYOKAAPPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the Original Conviction and Sentence in the Traffic Case No. 4794 of 2012 of the Chief Magistrate's Court at Mombasa – I. Ruguru – RM)

JUDGMENT

The appellant was Convicted and Sentenced to one year imprisonment for the offence of causing death by dangerous driving contrary to section 46 of the traffic Act .

The particulars of the charge were that,

“On the 28th day of June, 2012 at about 8:45 am along Ngala road at JCC in Mombasa District of the Coast Province, being the driver of motor vehicle registration number KBK 864R Faw Canter drove the said motor vehicle, along the said road, recklessly and at a speed which was dangerous to the public having regard to the circumstances of the case including the nature and condition and use of the road at the time and amount of traffic which was actually to be on the road at the time and due to the speed, the sliding door opened hit and knocked a wheel barrow pusher namely JOSEPH CHARUFA MBUTHO injuring him fatally”.

The facts which were read to the appellant that he drove carelessly, dangerously and at high speed which made his vehicle to flip open and it knocked a wheel barrow which was being pushed by the deceased who as a result sustained fatal injuries.

After the facts were read to him and in mitigation he had this to say,

“it was bad luck. The door accidentally flung open, it was not deliberate”.

Section 46 of the traffic Act provides,

” Any person who causes the death of another by driving a motor vehicle on a road recklessly or at a speed, or in a manner which is, dangerous to the public or by leaving any vehicle on a road in such a position, or manner or in such a condition as to be dangerous to the public having regard to all circumstances of the case shall be guilty of an offence and liable to imprisonment for a term not exceeding ten years”

A reading of the section shows that there are several distinct limbs of the offence, the first one is that

of driving recklessly, the second one is driving at a speed, the other is driving in a manner which is dangerous to the public, or leaving any vehicle on a road in a manner dangerous to the public.

These distinct and separate limbs cannot be lumped together as was the case in the present charge where it was alleged that the appellant drove recklessly and at a speed which was dangerous to the public.

It is quite evident that the charge is duplex and the Appellant who was unrepresented may not have understood it when it was read to him.

In his mitigation he clearly stated that it was bad luck, the door flung open accidentally and it was not deliberate.

That to my mind was not a plea of guilty, the magistrate ought to have noted that and proceed to fix the case for hearing. I do find that the charge was fatally defective, the plea if any, was equivocal. The appeal has merit and is allowed. I accordingly quash the Conviction and set aside the Sentence.

Judgment dated and delivered this **28th** day of **November, 2012**.

.....
M. MUYA
JUDGE

In the presence of:-

The Appellant

Court clerk – Musundi