



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT BUNGOMA**  
**Criminal Appeal 124 of 2009**  
**MOHAMMED KHAN KANIF .....APPELLANT**

~VRS~

**REPUBLIC .....RESPONDENT**

**JUDGMENT**

The accused person Mohammed Khan was charged and convicted of the offence of causing death by dangerous driving contrary to section 46 (1) of the Traffic Act. He was sentenced by Webuye Resident Magistrate to two (2) years imprisonment. The Appellant now appeals against the conviction and sentence.

Mr. Omukunda for the Appellant argued that the facts presented by the prosecutor after the Appellant pleaded guilty do not disclose an offence. The ingredients of the offence were not included in the facts. It is the Appellant's contention that the sentence was harsh and excessive.

Mr. Onderi, Senior Principal State Counsel conceded to the appeal. He agreed that the facts did not disclose an offence and that the sentence was harsh and excessive.

On perusal of the facts, the prosecutor said:

*“On reaching Bondeni area, a juvenile emerged from the right to cross to the left. The accused did not manage to control the vehicle. The juvenile was knocked and died. The accident was reported at Turbo Police Station which took action. The police blamed the accused for the accident and charged him with the offence. I produce the postmortem form.”*

For an offence of causing death by dangerous driving, the prosecution must prove that:

- a) *the accused was driving recklessly; or*
- b) *at a dangerous speed and*
- c) *in a manner dangerous to the public.*

The facts of the case do not make any attempt to explain how the accused was driving his vehicle at the material time. It was simply stated:

*“The accused did not manage to control his vehicle.”*

The statement does not blame the accused for driving recklessly or at a dangerous speed, or in a manner

dangerous to the public. I am in agreement with the defence and the state that the prosecution did not prove the ingredients of the offence. The magistrate ought to have entered a plea of not guilty after taking the facts. The case would have gone for trial for the prosecution to prove the Appellant's guilt if at all.

On sentence, the Appellant was a first offender and ought to have been given an option of fine. The sentence was therefore harsh and excessive. The appeal is therefore successful and is hereby allowed. I quash the conviction and set aside the sentence. The Appellant is thereby set at liberty unless otherwise lawfully held.

**F. N. MUCHEMI**  
**JUDGE**

Dated, Delivered and Signed at Bungoma this 16<sup>th</sup> day of February, 2010.

In the presence of the Appellant and the state counsel Mrs Leting.