



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA**

Criminal Appeal 41 of 2009

ALEXANDER K. KAMARI APPELLANT

VERSUS

REPUBLIC RESPONDENT

RULING

Before court is the Notice of Motion dated 9.4.2010 in which the appellant/applicant seeks inter alia the following orders: -

“(c) the order issued by the learned

Mr. T. Gesora, Resident Magistrate on 11.3.2009 in Traffic case No. 105 of 2008 to the effect that the accused’s driving license be cancelled for the next 3 years and that he be prohibited from obtaining or holding a driving license for the next 3 years, be suspended pending the hearing and the determination of this Appeal

(d) the confiscated driving license No. 589651 be released to the appellant”

The appellant herein had been charged before the lower court in **Traffic Case No. 105 of 2008 with the offence of Causing Death by Dangerous Driving contrary to “Section 46 of the Traffic Act Cap 403, Laws of Kenya.**

On 11.03.2009, the trial court convicted the appellant and fined him Kshs.20,000/= and in addition suspended his driving license for a period of three (3) years. The appellant paid the fine and has lodged an appeal against his sentence. He has now come before me seeking that the order of the learned magistrate suspending his license be lifted pending the hearing and determination of his appeal. Mr. Wachira learned counsel submitted on behalf of the applicant whilst

Mr. Onserio, learned state counsel appeared for the respondent state and opposed the application. I have carefully considered the submissions of Mr. Wachira and I have perused and considered the supporting affidavit of the application. The applicant argues that he earns his livelihood as a driver and thus stands to suffer great loss if his license remains cancelled. However this must be weighed as against the fact that as a consequence of accused actions (for which he stands convicted a human life was lost. It is not for me to determine the merits or otherwise of his intended appeal at this point but I find that I am not persuaded by the arguments of the applicant. The learned trial magistrate made a lawful order suspending his license and until his appeal is heard and determined I am loath to interfere with that order. As such I decline to allow this present application. It is dismissed in its entirety.

Dated and Delivered in Mombasa this 31st day of March 2010.

M. ODERO

JUDGE

Read in open court in the presence of:

Mr. Monda for state

Mrs. Wachira for applicant

M. ODERO

JUDGE