



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU Criminal Appeal 86 of 2008

PATRICK KIENGO GAKUMBI APPELLANT

VERSUS

REPUBLIC RESPONDENT

*(An appeal from the judgment of the Hon. J. Nyagah (a.g. SPM)
in Maua Traffic Case No. 2509 of 2007 delivered on 10th June 2008.)*

JUDGMENT

The appellant was charged before the lower court with the offence of causing death by dangerous driving contrary to Section 46 of the Traffic Act. He was convicted and charged and was sentenced to 3 years imprisonment and the court ordered for the cancellation of his driving licence for 3 years after the completion of his jail term. This is the first appellant court. As the first appellant court, I am expected to submit the whole evidence of the lower court to a fresh and exhaustive examination. In so doing, I must weigh the conflicting evidence and draw my own conclusion. In so doing, I should also make allowances for the fact that the trial court had the advantage of hearing and seeing the witnesses. See the case of Okeno Vs. Republic [1972] EA. 32. PW1 on 2nd December 2007 at 3pm was walking on Mutuati Road towards Raare direction. He saw a woman walking ahead of him. She too was going towards Raare direction. two vehicles from Raare direction towards Mutuati were chasing each other. One of them overtook the other then he saw it leave the road and hit the woman. The woman was about 1 ½ metres away from the hedge of the tarmac. The woman died on impact. He described the day as sunny and said that there was a pot hole in the middle of the road. It was that pot hole which the driver was avoiding to hit and as a result went off the road. Then he stated:-

“There was a pot hole on the middle of the road. There was nothing else on the road. I only saw two vehicles on the road. Two vehicles were chasing each other. It is not true that your vehicle (appellant) was the only one on the road. I did not hear you hooting.”

PW2 was a passenger in the vehicle that hit the lady. It was at 3pm when the vehicle was traveling to Mutuati. He was seated on the seat immediately behind the driver. He identified the driver as Patrick, the appellant in this case. There was at one time a pot hole on the road and as the driver approached the pot hole he heard him hooting. His attention was alerted and when he looked he saw a woman near the said pot hole. She was about ½ a meter away from the tarmac. The driver braked and in trying to evade the pot hole, the vehicle left the road and hit

the woman. The driver stopped some distance ahead. On being cross examined he said he was emphatic that the woman was off the road when she was hit. PW4 was the police officer who was called to the scene. He found the body of a female lying on the right side of the road facing Mutuati direction. He noted that the body was lying 3 meters away from the road. He noted the weather was good, it was sunny. The road was also clear without traffic because it was a Sunday. He noted the pot hole which was on the road. In his estimation, the vehicle was speeding because he was able to see the skid marks which indicated that the driver did not keep to his side of the road. The doctor who carried out the post mortem of the deceased formed the opinion that the cause of death was due to cordial vascular arrest due to multiple injuries which led to massive loss of blood. The appellant in his sworn evidence stated that he was driving towards Mutuati from Raare. When he approached a corner, he saw a woman suddenly. He tried to slow down but hit her. That was the only evidence the lower court received. My assessment of that evidence is that the appellant drove off the road and hit the deceased whilst she was off the road. I find that the magistrate was correct in his assessment of the prosecution evidence. That assessment of the evidence cannot be faulted. In his considered judgment the learned magistrate had this to say:-

“The accused must have been driving the vehicle carelessly. Even after leaving the road he drove for 12.6m before he hit the woman. This was after braking for 24.4m from where the skid marks started. The accused used to drive along the said road many items. Miriti PW1 used to see him driving on the said road. The accused was therefore aware of the pot hole at the said place. He opted to overtake recklessly at the said place. He was in no doubt chasing the other matatu. The fact that he could not stop for a distance of 37m clearly shows that he was moving at high speed at a place where he knew there were pot holes. There is no truth in the accused’s defence that there was a corner at the said place. He did not question any of the witnesses whether or not there was a corner.”

The appellant, in my view, drove the vehicle carelessly and dangerously and thereby went off the road hitting the deceased and causing her death. I find the appeal before me has no merit and I dismiss the same.

Dated and delivered at Meru this 19th day of March 2010.

MARY KASANGO
JUDGE