



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**Criminal Appeal 59 of 2009**

**MALINYA KITALYA WANJALA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**(From the Original Conviction and Sentence in the Criminal Case No. 2390 of 2009 of**

**The Senior Principal Magistrate's Court at Mombasa – L. Mutende –  
SPM)**

**RULING**

The appellant Malinya Kitalya Wanjala has moved the court by way of his Notice of Motion dated 24.4.2009 for an order that he be admitted to bail/bond during the pendency of his appeal. The Notice of Motion, which is supported by an affidavit sworn by the appellant's advocate Mr. Wanyonyi Chebukati, is based on the primary ground that the appeal has overwhelming chances of success and the hearing of the same may delay and cause the appellant damage since he is in custody.

The appellant contends that he was convicted and sentenced to 3 years imprisonment in Mombasa Traffic Case Number 2390 of 2009 without the option of a fine although he was a first offender and believes there was gross miscarriage of justice. In the premises the appellant believes his appeal has overwhelming chances of success and the likely delay in hearing the appeal will cause him irreparable loss.

In his oral submission in opposition to the application, Mr. Onserio the Learned State Counsel, argued that the offence for which the appellant was convicted is serious and involved the death of two people. In his view, therefore there was no option for a fine and the applicant had not demonstrated any reason for his admission to bail pending his appeal.

I have considered the application, the affidavits filed and the submissions of counsel. Having done so, I take the following view of the matter. The appellant was charged with two counts of causing death by dangerous driving contrary to Section 46 of the Traffic Act, Cap 403 Laws of Kenya. He appeared before L. Mutende, senior Principal Magistrate on 8.4.2009 who entered a plea of guilty after the appellant had pleaded that **"it is true"** to both counts. The prosecution stated the facts of the offence and when the appellant was invited to react to those facts he said the facts were correct and he admitted them whereupon the Learned Senior Principal Magistrate found the appellant guilty on his own plea and convicted him.

After the appellant's mitigation, the Learned Senior Principal Magistrate sentenced the appellant to 3 years imprisonment on each count. The sentences were to run concurrently. The appellant was also disqualified from driving for 3 years.

That conviction provoked the appeal filed on 24.4.2009. Only one ground is raised that the appellant's pleas was unequivocal. With regard to sentence, the appellant finds it excessive in the

circumstances.

Having perused the record of the Lower court I prefer not to express an opinion at this state on the appellant's contention that there was gross miscarriage of justice. Suffice to say that the appellant admitted the facts as stated by the prosecution which facts ingested that two people died as a direct consequence of the appellant's driving.

I am not persuaded that the appellant should be admitted to bail/bond pending the hearing and determination of his appeal. His application dated 24.4.2009 and lodged on 27.4.2009 is declined.

I however direct that a hearing date for the appeal be on priority basis.

DATED AND DELIVERED AT MOMBASA THIS 24<sup>TH</sup> DAY OF AUGUST 2009.

**F. AZANGALALA**

**JUDGE**

Read in the presence of: Mr. Mushelle holding brief of r Mr. Wanyonyi for the applicant and Mr.Onserio for State.

**F. AZANGALALA**

**JUDGE**

**24.8.2009**