

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Criminal Appeal 210 of 2007

JOHN KINYUA NJERUAPPELLANT

VERSUS

REPUBLICRESPONDENT

J U D G M E N T

The appellant herein, John Kinyua Njeru, pleaded guilty to a charge of two counts. On the first count, the appellant faced a charge of causing death by dangerous driving contrary to Section 46 of the Traffic Act. On count two, the appellant faced a charge of failing to report an accident contrary to section 73(3) of the Traffic Act. He was then convicted on the two counts and sentenced to serve 7 years in count I but discharged unconditionally in Count II.

On appeal, the appellant has raised two main grounds. First, it is argued that the plea was equivocal. Secondly, it is argued that the sentence is harsh and excessive. These grounds were strenuously opposed by the state.

On the first ground, it is the submission of Mr. Magolo, learned advocate for the appellant that the plea was equivocal. It is the learned advocate's argument that the appellant was not called upon to reply to each of the ingredients of the charge. It is also said that the facts outlined did not show the conditions of the road. Mr. Monda,

learned state counsel opposed this ground by stating that the plea

was unequivocal. I have perused the proceedings presented to this court. I have also considered the arguments tendered by both learned counsels. It is clear from the record that the charge was read and explained to the appellant in Kiswahili language which language the appellant spoke before the trial court. The facts were outlined in detail and the appellant agreed with the same when he was called upon to comment. The language he spoke is indicated to be Kiswahili. One of the facts stated is that the appellant drove motor vehicle registration No. KAM 113N Nissan Matatu at high speed so that it veered off the road and lost control. Under section 46 of the Traffic Act, one of the ingredients to prove the offence of dangerous driving is high speed. The appellant agreed that he drove the matatu at high speed. I find that the facts outlined by the prosecution before the trial court proved an offence under section 46 of the Traffic Act. I also find that the plea was unequivocal. Consequently the appeal as against conviction must be dismissed.

It is said that the sentence tendered is harsh and excessive. The appellant was jailed for 7 years. The law fixed the maximum sentence for such an offence at ten (10) years. The appellant was a first offender and he pleaded guilty. I am convinced that the sentence of 7 years though lawful is harsh and excessive for a first offender and more so for a person who pleaded guilty. For the above reason I will interfere with the order on sentence. I will reduce the same to 4 years imprisonment.

In the end I dismiss the appeal as against conviction. I allow the appeal on sentence by setting aside the sentence of 7 years and

substituting it with a sentence of 4 years to commence from the date of sentence by the trial court i.e. as from 22/11/2007.

Dated and delivered at Mombasa this 27th day of June 2008.

J.K. SERGON

J U D G E

In open court in the presence of Mr. Magolo for the Appellant and Mr. Monda, learned State Counsel.