

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 54 of 2008

JOSHUA MAGEMBE OICHOE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant, **JOSHUA MAGEMBE OICHOE**, was in Nakuru CM Criminal No.125 of 2006 charged with the offence of causing death by dangerous driving contrary to **Section 46** of the **Traffic Act**. It was alleged that on the 22nd September 2004 at about 2.00 p.m. along Nakuru/Kiamunyi road near National Petrol Station area in Nakuru District of Rift Valley Province, being the driver of motor vehicle registration number GK Z 345 Nissan Lorry belonging to Nakuru GK Prison he drove the said vehicle recklessly and at a speed or in a manner that was dangerous to the public having regard to all the circumstances of the case, including the nature, condition and use of the road and the amount of traffic which was actually at the time or which might reasonably be expected to be on that road and caused the death of one James Kiongo, a prison remandee who was aboard that vehicle. He pleaded not guilty but upon trial before the Senior Resident Magistrate at Nakuru he was convicted and sentenced to three years imprisonment. He has now appealed to this court against both that conviction and sentence.

At the hearing, Mr. Mugambi, learned state counsel, conceded the appeal on the ground that a post mortem examination report on the body of the accident victim having not been produced, the charge of causing death by dangerous driving was not proved. Mr. Machage for the Appellant, as would be expected, concurred with that submission and added that there is nothing in the record of appeal to show that the alleged remandee was indeed aboard that vehicle. He further submitted that the prosecution witnesses contradicted themselves on the place of the deceased's death. Whereas some said the victim died at the scene, others said he died in the hospital three days after the accident.

I have considered these submissions and read the record of appeal. I am surprised that the police could blunder on a basic point like the examination of a deceased person in a charge like this. Like murder, a charge of causing death by dangerous driving, cannot be proved without evidence linking the deceased's death to the accident. There being no such evidence on record I am constrained to concur with both counsel that the charge against the Appellant was not proved as required. Consequently I allow this appeal, quash the conviction and set aside the sentence. The Appellant shall be set free forthwith unless otherwise lawfully held.

DATED and delivered at Nakuru this 17th day of October, 2008.

D. K. MARAGA

JUDGE