

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 55 of 2008

PAUL MURATHIMI WAIGURU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

PAUL MURATHINI WAIGURU, the Appellant, was upon trial before the Senior Resident Magistrate at Nakuru on two counts of causing death by dangerous driving contrary to Section 46 of the Traffic Act convicted and sentenced to five years imprisonment on each count and disqualified from holding a driving license for life. The sentences were ordered to run concurrently. He has appealed to this court against both that conviction and sentence.

At the hearing, counsel for the Appellant abandoned the appeal on conviction. On sentence he submitted that the disqualification from holding a driving licence for life is illegal as Section 46 of the Traffic Act provides for disqualification for a period of only three years. As regards the imprisonment term, he submitted that causing death by dangerous driving not being an offence committed for gain, a custodial sentence is normally imposed on drivers with bad driving records. In this case he said that given the fact that the Appellant was a first offender and remorseful for the offence he committed the sentence of five years imprisonment was manifestly excessive. He therefore urged me to allow the appeal, reduce the disqualification period and having served two month's imprisonment before he was released on bail set the Appellant free or substitute the imprisonment term with a fine.

Mr. Njogu for the state conceded that the disqualification for life was illegal but left the issue of the custodial sentence to me.

Mr. Karanja, counsel for the Appellant, was wise in abandoning the appeal against conviction. From the evidence on record the appeal against conviction stood absolutely no chance of success.

The principles of sentencing in cases of causing death by dangerous driving were succinctly stated by the Court of Appeal in the case of Orwenyo Missiani Vs Republic [1979] KLR 285. While accepting its predecessor's view in Govid Shamji Vs Republic (1949) 16 EACA 116, the Court of Appeal further state that:-

“The offence of causing death by dangerous driving is not an ordinary type of crime.... committed for gain, revenge, lusts or to emulate other criminals.”

The Court of Appeal categorized such offenders and in effect said each case should be decided on its own merits. While there are cases where offenders should be treated leniently it said that there are others:-

“where a custodial sentence is merited, for example, when there is a compelling feature such as an element of intoxication or recklessness.”

The Court of Appeal went on to state that:-

“Offenders, too, can be put into categories. A substantial number have good driving records, a fair number have driving records which reveal a propensity to disregard speed restrictions, road signs or to drive carelessly, and a few have records which show that they have no regard whatsoever for either the

traffic law or the lives and safety of other road users. In the judgment of this court an offender who has a good driving record should normally be fined and disqualified from holding or obtaining a driving licence for the minimum statutory period or a period not greatly exceeding it, unless of course there are special reasons for not disqualifying. If his driving record is indifferent the period of disqualification should be longer, say two or four years, and if it is bad, he should be put off the road for a long time. For those who have caused a fatal accident through a selfish disregard for the safety of other road users or their passengers or who have driven recklessly; a custodial sentence with a long period of disqualification may well be appropriate, and if this kind of driving is coupled with a bad driving record the period of disqualification should be such as will relieve the public of a potential danger for a very long time indeed.”

In this case it is clear from the evidence of PW1 and PW2 that, in total disregard of the safety of his passengers, the Appellant, for unclear reason decided to run away from the police. It is on record that he totally disregarded the pleas of his passengers and attempted to overtake in the face of an on coming vehicle. In doing so he drove recklessly and at a high speed and collided head on with an oncoming vehicle and caused the death to two people and serious injuries to several other passengers. He therefore falls into the category of the drivers who have no regard whatsoever for either the traffic law or the lives or safety of other road users. Given the carnage on our roads, such drivers should not be shown any mercy. In the circumstances I dismiss the Appellant's appeal relating to the five years imprisonment. As regards disqualification from holding a driving license I agree with both the state and the Appellant's counsel that the disqualification for life is illegal. In accordance with Section 46 of the Traffic Act, I reduce the period to three years imprisonment from the date of the Appellant's release from prison. The Appellant shall therefore go back to prison and serve the remaining part of his five years sentence.

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

D. K. MARAGA

JUDGE