



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL APPEAL NO. 73 OF 2003

FROM ORIGINAL CONVICTION AND SENTENCE IN TRAFFIC CASE NO. 3463
OF 2002 OF THE CHIEF MAGISTRATE'S COURT AT THIKA

GEOFFREY NAGOLI ARUMAN.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, **GEOFFREY NAJOLI ARUMANA**, was convicted for two counts of **CAUSING DEATH BY DANGEROUS DRIVING**, and one count of **DRIVING A MOTOR VEHICLE ON A PUBLIC ROAD WITHOUT A DRIVING LICENCE**. For the first two counts, the appellant was jailed for five years, on each count, although the court then directed that the sentences would run concurrently. Whilst on the 3rd count, the appellant was fined Kshs 20,000/=, in default of which he was to be imprisoned for 3 months.

Furthermore, the learned trial magistrate disqualified the appellant from holding or obtaining a driving licence for three years after his release.

The basic facts of the case were that the appellant drove a lorry so dangerously that it lost control, at Ithanga, along the Thika- Ithanga Road, within Thika district. When the vehicle lost control, it left the road and ran into four pedestrians, killing two of them.

The manner in which the pedestrians lost their lives is not in dispute. In other words, even the appellant did concede that the deceased were killed by the lorry, which had lost control. But in his defence, the appellant says that he was not the person who was driving the lorry at the time of the accident.

The appellant insisted that his role in the lorry was only that of the turnboy. He testified that on the material day, the lorry delivered some goods to Ithanga. He helped the regular turnboy to offload the goods. Thereafter, the lorry was loaded with bananas at the market place, and that he was involved in the said loading.

According to the appellant, the lorry was at all times driven by the driver, other than himself. But the prosecution insists that the appellant did confess to the fact that he was the person driving the vehicle at the time of the accident in issue. That confession was admitted in evidence after the learned trial magistrate conduct a trial within a trial. The need for the said trial within a trial arose from the fact that the appellant had retracted his alleged confession.

It is significant that the only nexus between the appellant and the accident is his said confession. If that confession were not admitted in evidence, there would have been nothing else to connect the appellant to the offence. For that reason, it was incumbent upon the learned trial magistrate to handle the confession

with the utmost care. By utmost care, I mean that the statement should have been treated with caution, and then weighed against all the available evidence, so as to enable the learned trial magistrate ascertain whether or not the confession was voluntarily given, or if the appellant had been compelled to sign it.

When re-evaluating the evidence on record, as a first appellate court is obliged to do, I find that in principal, the decision by the trial court to admit the confession in evidence, cannot in itself be faulted. I say so because he followed the correct procedure, by conducting a trial within a trial, after the appellant had retracted the confession. But having admitted the confession, the trial court seems to have accepted it at face value, when convicting the appellant. I say so because it appears to me that once the trial court had noted the confession to the effect that the appellant had been driving the vehicle at the time of the accident, the learned trial Magistrate did not take note of the fact that PW2's evidence actually corroborated the defence of the appellant. PW2, Phillip Naboth Mubasi, was a turnboy on the lorry. He testified that the person who was driving the lorry at the time of the accident was "the Driver, Suleiman"

Accordingly, I hold that the appellant's defence ought not to have been dismissed as PW2's testimony gave it support. In the circumstances, the learned State Counsel, Mrs. Toigat, was quite right to have conceded the appeal.

I therefore now quash the conviction, set aside the sentence, and order that the appellant be set at liberty unless he is otherwise lawfully held. In the event that the appellant did pay any fine, the same should be paid back to him.

It is so ordered

Dated at Nairobi this 16th day of May, 2005

FRED A. OCHIENG

JUDGE

Delivered in the presence of:

For the State

Appellant in person

Mr. Odero Court Clerk