

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Appeal 395 of 1999

ERICK MWANGI GATIMU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from original judgment and conviction in Principal Magistrate's Court at

Muranga Traffic Case No. 2585 of 1997 dated 30th May 1999 by Miss F. F. Wanjiku

P.M. –Muranga)

J U D G M E N T

Eric Mwangi Gatimu, hereinafter referred to as the Appellant was tried and convicted by the Senior Principal Magistrate Muranga for the offence of causing death by dangerous driving contrary to section 46 (1) of the Traffic Act Cap 403 of the Laws of Kenya. He was sentenced to serve 3 years imprisonment and his driving licence endorsed and suspended for that period.

Being dissatisfied he has appealed against his conviction and sentence. At the hearing of the appeal his advocate did not attend court despite having been served with a hearing notice. Learned State Counsel has urged the court to dismiss the appeal contending that there was sufficient evidence to support the conviction. At the trial before the lower court, 7 witnesses testified for the prosecution. The Appellant also gave unsworn evidence in his defence. Briefly the prosecution evidence was that on the material night at about 9.00 p.m., Corporal John Kimenju (hereinafter referred to as the deceased who was a police driver was driving a police land rover Registration No. KAB 881U GK. He parked the vehicle off the tarmac road. Chief Inspector Githuku Gathegi (P.W.II) who was in the vehicle got off to talk to someone. He stood talking to the person just behind the police land rover. At about that time David Maina Njuguna (P.W.IV) and his brother Bernard Chege Njuguna (V) were passing by when P.W.V stopped to talk to the deceased. They stood at the front of the land rover talking. It was then that the Appellant's motor vehicle a Suzuki Registration No. KAB 076 came at a high speed left the road and crushed into the police land rover knocking the deceased and P.W.V both of whom, were seriously injured. They were both taken to hospital where the deceased later died.

In his unsworn defence the appellant claimed he was confused because he saw the land rover which was stationary and another vehicle on the right side. As he approached a corner just before reaching the vehicles, another vehicle appeared and blinded him with its headlights. The appellant's vehicle left the road and touched the land rover on the left side.

It is clear from the above evidence that the police land rover was parked off the road. Although the Appellant claimed there was another on coming vehicle which blinded him with its headlights, none of the other witnesses saw any other vehicle on the road apart from the appellant's.

Moreover even assuming that the appellant was blinded by headlights of an oncoming vehicle the prudent thing that a careful driver would have done is to stop his vehicle. It is evident that the appellant was driving very fast and that is why he lost control of his motor vehicle and knocked onto the deceased and the stationary motor vehicle. There was sufficient evidence to prove that the appellant drove his motor

vehicle at a speed or in a manner which was dangerous to other road users thereby causing the accident which resulted in the deceased suffering serious injuries. It is obvious that these injuries is what necessitated the procedure that resulted in the death of the deceased. The appellant is therefore deemed to have caused the death of the deceased as defined in section 213(a) of the Penal Code.

Accordingly I find that the appellant's conviction was proper. As for the sentence, of 3 years imprisonment and disqualification from driving, the same was not so manifestly excessive as to warrant the intervention of this court. The upshot of the above is that I find no substance in this appeal and do therefore dismiss it in its entirety.

Dated signed and delivered this 28th day of June 2005

H. M. OKWENGU

JUDGE