



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**CRIMINAL APPEAL 70 OF 2004**  
**(From original conviction and sentence of the Senior Principal**  
**Magistrate's Court at Naivasha in Traffic Case No. 6 of 2003 –**  
**J. S. Kaburu)**

**ROCKEFFELLER MUHANJI SEGERO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant, Rockefeller Muhanji Sagero, was charged with ten counts of causing death by dangerous driving contrary to **Section 46 of the Traffic Act**. The particulars of the offence were that on the 18th of April 2003 at about 9.00 a.m. along Nairobi-Naivasha road at Karai area in Nakuru District, the appellant being the driver of motor vehicle registration number KAN 556M Nissan Matatu, drove the said motor vehicle in a manner that was dangerous to the public having regard to all the circumstances prevailing at the time and the amount of traffic using the road or expected to be using the road at the time and thereby cause an accident and the deaths of Sabina Nyagwaga Otieno, Joseph Duncan Maina, Cypriano Walutila Mangeu, Leah Wachira Mbuthia, Ruth Wambui Mbuthia, Tesi Waithera Mbuthia, Naomi Waithera Mbuthia, David K. Kimuge and two unknown adults (one male and one female). The appellant pleaded not guilty to the said charges and after a full trial he was convicted as charged on all the ten counts. He was sentenced to serve four years imprisonment on each count. The sentences were ordered to run concurrently. His driving licence was cancelled for a period of five years after the appellant had served his sentence. Being aggrieved by his conviction and sentence, the appellant appealed to this court against the said conviction and sentence.

At the hearing of the appeal, the appellant abandoned his appeal against conviction. He stated that he was admitting the offence of causing the deaths of the ten persons mentioned in the charge sheet by dangerous driving. He however argued his appeal against sentence. He submitted that he had been in prison, (so far) for a period of nineteen months and fifteen days. He argued that for the said period served, he had been sufficiently punished. He stated that he did not intend to cause the accident which occurred because if he had the intention, he could have risked his life. He submitted that he had not been involved in any other accident other than the one which caused the fatal injuries to the deceased. He further submitted that during his incarceration his wife died at child birth leaving behind two young children who rely on him for their sustenance. He stated that his father was mentally unstable and therefore unable to fend for himself. He pleaded with the court to exercise leniency on him and reduce the custodial sentence imposed on him.

Mr Koech, Learned State Counsel, opposed the appeal on sentence. He submitted that the sentenced meted out on the appellant of four years imprisonment for the offences charged was too lenient in the circumstances. He argued that if the said sentence was apportioned it would translate to the appellant serving four and half months imprisonment for each death caused. He urged the court not to interfere with the sentence imposed by the trial magistrate including the order cancelling the appellant's driving licence for five years after completion of his prison sentence.

I have carefully considered the submission made by the appellant and the response thereto by the State. The appellant's plea is for a reduction of the custodial sentence imposed. The maximum penalty provided by **Section 46 of the Traffic Act** for the offence of causing death by dangerous driving is ten years imprisonment. In the instant case the appellant caused the deaths of ten persons by dangerous driving. He was only sentenced to serve four years imprisonment for each count that he was charged. The sentences were ordered to run concurrently. The appellant will thus serve four years imprisonment. The plea by the

appellant for leniency notwithstanding, I agree with Mr Koech that the sentence of four years imprisonment imposed was too lenient in the circumstances of this case. The appellant ought to have been sentenced to serve a more stiffer custodial sentence putting into consideration the circumstances upon which the offences were committed. I will therefore not interfere with the said sentence. I find no merit with the plea by the appellant that this court should exercise leniency on him. The appellant caused the death of ten innocent Kenyans by his careless driving. The truth of the matter is that the trial magistrate's court exercised the leniency that the appellant is now craving for. The appeal on conviction and sentence is therefore dismissed. The conviction and sentence of the trial magistrate is hereby confirmed.

**DATED at NAKURU this 19th day of October 2005.**

**L. KIMARU**

**JUDGE**