



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**CRIMINAL APPEAL NO. 120 OF 2000**

**JOHN MWANGI KAIGWA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(Appeal from a judgment of the Principal Magistrate's Court  
at Muranga, Nyaga Njagi, Senior Resident Magistrate,  
in Traffic Case No. 5123 of 1993)**

**JUDGMENT**

The Appellant who has appealed against his conviction and sentence was charged in five counts each alleging causing death by dangerous driving contrary to Section 46 of the Traffic Act. Particulars were that on 8th December 1993 at about 7.15 p.m. along Muranga Sabasaba road, the Appellant drove a motor vehicle Reg. No. KSA 781 Ford Tractor in a dangerous manner and caused the deaths of Kimani Muiruri, Julius Mwangi Muguro, Michael Ngige Mburu, Gachanja Gacheru and Kamau Waitthaka respectively. In count six the Appellant was charged with driving the motor vehicle while it was unroadworthy. In count seven the charge alleged that the Appellant was driving the tractor while it was unlicensed. In count eight it was alleged the Appellant drove the tractor while it was unregistered.

In count nine the charge alleged the use of an unroadworthy trailer and count ten alleged that the Appellant had no driving license while count eleven charged the Appellant with failing to report an accident. He was convicted on all counts except count ten. When I was writing this judgment on Saturday 15th November 2003 at 6.45 p.m. in my house I remembered to go outside the house to check whether there was darkness. I found there was darkness and saw street lights already on at a distance and could see that if anyone were to drive a motor vehicle in the compound where I was, an open compound without any obstruction to natural light, one would have to put on the motor vehicle's light if one were in his normal senses.

That was 30 minutes to go to 7.15p.m. and the night was getting darker and darker at a good speed. It is still mid November and the accident involved in this case happened on 8th December at about 7.15 p.m. according to the charge sheet. But from the evidence, the learned trial magistrate found the time to be 7.30 p.m. December 8th was only 23 days away from November 15th and Muranga is not far from Nyeri. The sun still moving towards the Tropic of Capricorn on the South 7.15 p.m. is going to be more darker than the darkness 7.15 p.m. has today.

The Appellant having driven motor vehicle Registration No. KSA 781 Ford Tractor on Muranga-Sabasaba road on 8th December 1993 without light, that was clearly dangerous to the public and that was more so when the tractor was pulling a trailer ferrying logs of wood both the tractor and the trailer being not only defective, but also having no reflectors. That was very dangerous and could also be described as reckless driving. In those circumstances a passenger on the tractor waving a red shirt to the approaching mini bus No. KAB 907 T was useless and I do not see how any such passenger could know whether the approaching minibus was at a high speed or was at a low speed.

I have read the trial court's record in light of the submissions before me and I have no doubt that the Appellant was properly convicted on each one of the ten counts on which he was found guilty and I

have no reason to interfere.

On the sentence, I note that the learned trial magistrate was very considerate and I am told the fines have been paid. Accordingly, the Appellant's appeal is hereby dismissed in its entirety.

Dated this 26th day of November, 2003.

**J. M. KHAMONI**

**JUDGE**