

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIRMINAL APPEAL OF. 1491 OF 2000

**From Original Conviction and sentence in Criminal Case No. 311 of 1995 of
The resident Magistrate's Court at Kikuyu.**

JOSEPH CHERUIYOT BORU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted of five counts of causing death by dangerous driving c/s 46 of The Traffic Act Cap 403 Laws of Kenya; and on each count he was sentenced to ten(10) years imprisonment. The sentences were ordered to run concurrently. Being aggrieved by the said conviction and sentence he lodged an appeal.

At the hearing of this appeal, it transpired that he was only appealing against sentence. This he confirmed.

The period of imprisonment provided for under section 46 aforesaid is imprisonment for a term not exceeding ten years and in addition disqualification from holding a driving licence for three years.

The appellant was said to be a first offender. He had nothing to say in mitigation. The learned trial magistrate took into account the seriousness of the offence and loss of five lives. I agree the courts should take a serious view of such offences. However, as a first offender, the appellant did not deserve the maximum sentence as imposed by the learned trial magistrate. I am inclined in the circumstances to interfere with the same.

I accordingly set aside the sentence of ten years on each count and in place thereof impose a sentence of four(4) years imprisonment on each of the five counts. The sentences shall run concurrently.

The disqualification from possessing or obtaining a driving licence for 3 years shall remain and the period thereof shall run from the date of completion of the sentence of imprisonment herein.

Orders accordingly.

Dated and delivered at Nairobi this 5th day of December 2002.

MBOGHOLI MSAGHA

JUDGE

