



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL APPEAL NO.636 OF 2001**

**BENJAMIN ROBI GITHEANJI ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGEMENT**

Benjamin Robi Githenji (the appellant) was charged with causing death by dangerous driving contrary to section 46 of the Traffic Act and failing to stop after accident contrary to section 73 of the same Act. He was convicted as charged after a full trial and sentenced to serve two and half years imprisonment for causing death by dangerous driving and fined Shs.500 or in default to serve one month imprisonment. He has appealed against sentence only, essentially on the ground that the sentence meted out was extremely harsh in the circumstances of this case.

The appellant was employed at RUSINGA SCHOOL as a driver. On the 14th June, 1999 at about 6.00 a.m. he was driving the said school's bus registration No. KAD 618Y Isuzu towards Buru Buru to go and collect children. While driving along Argiwings-Kodhek Road within Nairobi he crashed a pedal cyclist James Anaya Ombima who was riding in the opposite direction, causing his death instantly.

The facts which the prosecution proved beyond reasonable doubt, accepted by the trial magistrate and which the appellant has not denied, are that the accident occurred because the appellant, while driving at high speed, was in the process of overtaking motor vehicle Reg. No.KAJ 797 G driven by John Oyagio Muga (PW 2) when he crashed to death a pedal cyclist who was riding towards the opposite direction, and who was on his proper side. The road at the point of impact is marked with a yellow continuous line at the middle, signifying that overtaking of other motor vehicles at that spot is prohibited by the traffic Rules. Besides, the appellant has also accepted that he did not stop after the accident. His defence that it was the matatu driver (PW 2) who crashed the deceased was rejected by the trial magistrate.

The offence of causing death by dangerous driving under Section 46 of the Traffic Act carries a maximum, but not a mandatory, sentence of ten years imprisonment. In Govid Shamji V. Republic (unreported) Criminal Appeal No.30 of 1975 (Nairobi) Madan and Cheson JJ had this say about the principle of sentencing persons convicted of a traffic offence under Section 46 of the Traffic Act:

***“The offence of causing death by dangerous driving is not an ordinary type of crime. While it cannot be given an aura of protection by putting it in a glass case of its own, the people who commit this offence do not have a propensity for it, neither is it a type of crime committed for gain, revenge, lust or to emulate other criminals. In a case of causing death by dangerous driving, a custodial sentence does not necessarily serve the interests of justice as well as the interests of the public. There are of course cases where a custodial sentence is merited, for example, when there is a compelling feature such as an element of intoxication or recklessness.”***

In my view however the decision of LANTON L.J. in R.V. GUILFAYLE (1973) 2 All.E.R.844 has a compelling and commanding analysis of cases falling under Section 46 of the Traffic Act and set down acceptable principles of sentencing in relation to this offence which I find favour with. His Lordship LANTON had this to say:

