



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL APPEAL NO.904 OF 1999**

**(FROM ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL CASE NO.11914
OF 1998 OF THE SENIOR PRINCIPAL MAGISTRATE'S COURT AT NAIROBI)**

DAVID SIMIYU RULIKA APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGEMENT

DAVID SIMIYU BULIKA (referred to in this judgement as “the appellant”) was convicted on the 29th July, 1999 by the Senior Resident Magistrate Nairobi in the Chief Magistrate’s Court Traffic Case No.11914 of 1998 of the offence of Causing Death by dangerous driving contrary to Section 46 of the Traffic Act Chapter 403 Law of Kenya. Particulars of the offence were that: on the 7th June 1998 at about 8.30 p.m. along Landhies Road, within Nairobi, being the driver of Motor vehicle Registration No.GK Y600 (KAG 647 N) Toyota Corolla Saloon, drove the said motor vehicle at a speed and manner which was dangerous to the public and other road users, having regard to all circumstances of the case including the nature, condition and use of the road and amount of traffic which might be reasonably expected on the road, and thereby caused the death of Sergeant ROGERS AJUMA MARUMBA who was a passenger. He was sentenced to serve three years imprisonment and disqualified from holding a driving license for another period of three years upon completion of the jail term. He has now appealed against his conviction and sentence through M/s KITHEKA & CO. ADVOCATES.

During the hearing of this appeal the appellant was not present, as he had indicated he did not wish to be present. His advocates too were absent though served with the hearing notice.

Evidence which was adduced before the trial magistrate through IP Augustine Tonya Lewa (PW 1) CPL John Makau Mutua (PW 2) PC Charles Mungai Kimani (PW 3) and CPL Edward Wawire Oyalo (PW 4) was to the effect that the cause of the accident was (a) the appellant’s state of drunkenness during the time he was driving (b) appellant’s high speed driving and his failure to reduce speed or to slow down and stop and his refusal to hand over the vehicle to PC Mutua (PW 2) to driver (c) overtaking other vehicles when it was unsafe to do so.

The appellant gave sworn evidence and denied to have been driving at high speed before the accident. His explanation was that a motor vehicle pick-up which he was following suddenly, stopped without warning and he tried to avoid knocking it when his vehicle skidded off the road. He however contradicted himself in cross-examination when he conceded that he was overtaking another vehicle when the accident occurred, and that the car skidded due to the fact that the road was wet.

He called IP ERNEST OBEVA OMULUNGA (DW 2) as his witness. This is the officer whom the appellant drove to duty at 7 p.m. and soon thereafter the appellant was assigned to drive the deceased and

his other colleagues home. It was the evidence of IP Omulunga (DW 2) that the appellant was drunk when he drove him to duty, that when the appellant was told to hand over the car to PC Mutua (PW 2) to drive, he refused. IP Omulunga conceded that he allowed the appellant to drive though he knew that he, the appellant, was drunk.

I am satisfied from the above evidence that this accident was caused or contributed to substantially by the appellant's consumption of alcohol. He was also shown to have been driving at high speed and overtaking other vehicles when it was unsafe to do so. This is all evidence of dangerous driving.

The death of Sgt. Ajuma is not disputed. He as a passenger in the appellant's vehicle, he sustained head injuries in the accident and he died on admission at Kenyatta National Hospital while undergoing treatment. A postmortem Examination form filed by Dr. Alex Kirasi Olumbe was tendered into evidence as Exhibit 3 by PC. Enock Shikanga (PW 7) without objection by Mr. Masinde Advocate who represented the accused in the trial. According to Dr. Olumbe the cause of the deceased's death was head injuries due to motor vehicle accident.

In agreement with the learned trial Magistrate I hold that the appellant's manner of driving was dangerous and his conviction was therefore safe. There is no merit in this appeal against conviction.

On sentence, I find that the appellant showed a selfish disregard for the safety of other road users and his passengers, with degree of recklessness and deliberate risk taking when he insisted to drive when he was drunk, then drove at high speed and started overtaking vehicles when it was unsafe to do so. I accept the decision in R.V. GUILFOYLE (1973) 2 ALL.E.R. 844 to the effect that, for those who have caused a fatal accident through a selfish disregard for the safety of other road users or their passengers or who have driven recklessly, a custodial sentence with a long period of disqualification is appropriate.

For the above reasons, this appeal is hereby dismissed. It is so ordered.

Dated this 31st August, 2001.

A.G.A. ETYANG'

JUDGE

Delivered this 31st August, 2001 in the presence of Mr. Okello for the Republic. No appearance by the appellant. Helen Wanja – Court clerk.

A.G.A. ETYANG'

JUDGE

31.8.2001