



REPUBLIC OF KENYA



**Maring v Republic (Criminal Appeal E001 of 2025)
[2025] KEHC 5902 (KLR) (Crim) (12 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5902 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
CRIMINAL
CRIMINAL APPEAL E001 OF 2025
SC CHIRCHIR, J
MAY 12, 2025**

BETWEEN

SIMON EKERET MARING APPELLANT

AND

REPUBLIC RESPONDENT

(Being an Appeal from the Judgment of Hon. L.Mutai (CM) delivered on 30th January 2023 at the chief Magistrate's court at Isiolo Traffic case No. 103 of 2019)

JUDGMENT

1. The appellant herein was Charged with the Offence of Causing Death by Dangerous Driving Contrary to Section 46 Of the *Traffic Act*. The particulars are that on the 3rd day of February 2019 at about 9 P. M. near Fairway Petrol Station along Isiolo - Archers road, within Isiolo County, being the driver of the motor vehicle registration number KAU 611H Toyota Matatu, did drive the said motor vehicle recklessly and at a speed or in a manner which was dangerous to the public having regard to the circumstances of the case including the nature, condition and the amount of traffic at the time caused an accident in which a pedestrian namely Nura Mohammed was fatally injured.
2. He faced a second count of driving a Motor Vehicle on Public Road While under the Influence of Alcohol Contrary to The Section 44(1) Of the *Traffic Act*.
3. He was acquitted of the 2nd count, but convicted on the 1st count and sentenced to a fine of Kshs. 1,800,000/= and in default to serve 7 years imprisonment.
4. He was aggrieved by the outcome and proffered this appeal.



Petition of Appeal

5. The appellant has presented the following grounds for consideration:
 1. That, the learned trial magistrate erred in law and fact by not noticing that the prosecution did not prove their case beyond reasonable shadow of doubt.
 2. That, the learned trial magistrate erred in law and fact by relying on, purely speculative evidence.
 3. That, the sentence awarded by the learned trial magistrate was excessive based on the circumstance of the offence.
 4. That, learned trial magistrate erred by law and fact by disregarding the facts raised in the appellants defence of alibi.
 5. That, the learned trial magistrate never considered that the appellant herein was a first offender.
6. The appeal proceeded by way of written submissions.

Appellant submissions

7. It is the appellant's submissions that the totality of the evidence presented by the prosecution was not enough to sustain a conviction as none of witnesses was an eye witness.
8. On sentence he submits that the trial court failed to consider the fact that he was a first offender.

Respondent's case

9. The respondent concedes to the Appeal on both conviction and sentence. It is conceded that there was no eye witness to the accident, and that the fine of Kshs. 1,800,000/= was excessive.

Determination

10. An appeal to this court from the subordinate court is by a way of retrial and in the case of *Gitobu Imanyara & 2 others v Attorney General* [2016] KECA 557 (KLR), the court set out the duty of the appellate court as follows: "This being a first appeal, it is trite law, that this Court is not bound necessarily to accept the findings of fact by the court below and that an appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect. See *Selle and Another v Associated Motor Boat Company Limited and others* [1968] EA 123 and *Williamson Diamonds Ltd. V. Brown* [1970] E.A.L."
11. I have considered the evidence, the grounds of Appeal and the parties' submissions.
12. It is trite law that to sustain a conviction in a charge of dangerous driving, the "dangerous" conditions prevailing at the time, and the role of the driver in causing those conditions or situation must be demonstrated. In *Nzuki & another -vs Republic*(2022)KEHC 14534 (KLR) for instance, the court held: "It is equally true that the mere occurrence of a traffic accident alone is not proof of the offence of causing death by dangerous driving as evidence must be tendered to disclose the dangerous situation and the driver must be shown to be guilty of a departure from the normal standard of driving which would be expected of a reasonably prudent driver. See *Ngure v Republic* [2003] EA. In particular, in



the case of *Atito v Republic* (1975) E.A 281, the Court of Appeal stated that - “ to justify a conviction for the offence of causing death by dangerous driving there must not only be a situation which viewed objectively was dangerous but there must also be some fault on the part of the driver causing that situation”. (Emphasis added)

13. The imperative question in this case is, “viewed objectively” , what was the dangerous situation in this case, and what role did the driver play? A perusal of the witnesses’ testimonies shows that none of the prosecution witnesses witnessed the accident. Two of the witnesses were with the pedestrian prior to the accident and had parted ways with him when he was hit. The circumstances surrounding the accident therefore only came out from the Appellant herein. His testimony was that he went over the bump and suddenly he heard something hitting the windscreen. The fact that he just saw something hit the windscreen may imply that he was not paying attention. The fact that the pedestrian was fatally injured, may also imply high speed on the part of the Appellant. All the foregoing are possibilities, but as rightly pointed out by the Appellant, all are speculative.
14. Thus, there was no evidence to present a picture of the situation at the time and the role of the Appellant in causing the situation. The picture that comes out is that there was indeed an accident and a pedestrian was killed as a result. As to whether the Appellant was responsible for the situation that caused the accident, there was no evidence
15. I have seen a sketch plan produced (PEX B 1) but the sketch is not accompanied by explanatory notes. Thus, the various positions marked as A, B, D & G remains unexplained. Further the witness who produced the sketch (PW4) was not led in evidence to explain his sketch. On the plan one can see some remarks indicating “Skid marks”, leading towards the side of the road. From these remarks, one may be able to decipher the implication of the skid marks but again, that would be speculative, as there was no explanation at all from the producer of the document.
16. I am not satisfied that there was evidence to prove the accused’s guilty. It appears that the basis of the trial court’s findings was inferences drawn from the Appellants testimony. That was an unsafe basis for the Appellant’s conviction. The burden of proof, as always, belongs to the prosecution, to prove their case beyond reasonable doubt. In the event that the prosecution falls short, an Accused person is entitled to an Acquittal, as a matter of right.
17. In the end, the Appeal succeeds. The conviction of the Appellant is hereby quashed and sentence set aside.
18. He shall be set free forthwith unless otherwise lawfully held.

DATED , SIGNED AND DELIVERED , AT ISIOLO THIS 12TH DAY OF MAY 2025.

S. CHIRCHIR

JUDGE.

In the presence of:

Mr. Kashane- Court Assistant

Mr. Ngetich for the Respondent

Simon Ekeret- Appellant.

