



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Gichuki (Criminal Appeal 66 of 2023)  
[2025] KEHC 8371 (KLR) (16 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8371 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL 66 OF 2023  
DR KAVEDZA, J  
JUNE 16, 2025**

**BETWEEN**

**REPUBLIC ..... APPELLANT**

**AND**

**DAVID LAWRENCE KIGERA GICHUKI ..... RESPONDENT**

*(Being an appeal against the sentence delivered by Hon. D. Kuto  
(SPM) on 28th April 2023 at Kibera Chief Magistrate's Court Traffic  
Case No. 1454 of 2012 Republic vs David Lawrence Kigera Gichuki)*

**JUDGMENT**

1. The respondent was charged and, following a full trial, convicted on three counts of causing death by dangerous driving contrary to section 46 of the *Traffic Act*, Cap 403, Laws of Kenya. On the fourth count, he was convicted of reckless driving contrary to section 47(1) of the same Act. For Counts I, II, and III, he was sentenced to pay a fine of Kshs 200,000 on each count, in default to serve three years' imprisonment. On Count IV, he was sentenced to a fine of Kshs 30,000, in default to serve one year's imprisonment. Additionally, his driving licence was cancelled for two years.
2. Aggrieved by the sentence, the appellant lodged an appeal challenging its legality and propriety. The grounds of appeal are that the trial court erred in law and by fact by failing to consider the victims' impact statements and the pre-sentence report prior to sentencing. It is further contended that the court disregarded the mandatory sentence of ten years imprisonment prescribed under section 46, which does not provide for a fine. The appellant also faults the court for failing to consider the prosecution's submissions and cited authorities during the respondent's sentencing.
3. This being an appeal against sentence, the Court in *Wanjema v Republic* (1971) EA 493 laid down the general principles upon which the first appellate Court may act on when dealing with an appeal on sentence. An appellate Court can only interfere with the sentence imposed by the trial Court if



it is satisfied that in arriving at the sentence the trial Court did not consider a relevant fact or that it considered an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive. However, the appellate Court must not lose sight of the fact that in sentencing, the trial Court exercised discretion and if the discretion is exercised judicially and not capriciously, the appellate Court should be slow to interfere with that discretion.

4. I have considered this matter with caution and care. The trial Court was careful in the manner it conducted the sentencing proceedings. It then delivered a detailed and well-reasoned ruling and several relevant decisions were cited.
5. The Court considered several parameters including the nature of the offence, and the mitigation, among other relevant factors prior to sentencing the respondent. The trial court also cited the case of *Govid Shamji v Republic* (unreported) Criminal Appeal No30 of 1975 (Nairobi) where Madan J and Chesoni 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.”

6. The *Sentencing Policy Guideline 2023*, provides as follows:
  - 3.3.5 Non-custodial sentences – or suspended sentences - should be considered unless, in light of the nature and seriousness of the offence committed and other factors, justice would demand the imposition of a custodial sentence.
7. Upon review of the record, it is evident that although the respondent was a first offender, the trial court failed to give due weight to the aggravating circumstances that emerged during trial. The respondent was found guilty of recklessness, which went beyond mere error of judgment and amounted to a serious disregard for the safety of other road users. The deaths resulting from his conduct were not accidental in the strict sense, but flowed directly from his grossly negligent manner of driving. In light of these findings, the sentence imposed was manifestly low and did not reflect the gravity of the offence.
8. While the trial court considered the pre-sentence report, the victim impact statements, and the respondent’s health condition, it failed to balance these mitigating factors against the established aggravating conduct. The principle in *Govid Shamji* (supra), which recognises that dangerous driving does not always stem from malice or intent, does not excuse recklessness of the degree demonstrated in this case. Where the conduct is aggravated by clear recklessness, an enhanced sentence is not only justified but necessary to serve the ends of justice.
9. Accordingly, I find that the trial court erred in imposing fines that were disproportionately lenient in view of the seriousness of the offences and the aggravating circumstances, particularly the respondent’s reckless conduct. The appeal is therefore allowed on sentence and the following orders are made:
  - i. The fine of Kshs 200,000, in default to serve 12 months’ imprisonment on each of Counts I, II, and III, is hereby substituted with a fine of Kshs 300,000 per count, in default to serve 12 months’ imprisonment per count.



- ii. The fine of Kshs 30,000, in default to serve 12 months' imprisonment imposed on Count IV, is substituted with a fine of Kshs 200,000, in default to serve 12 months' imprisonment.
- iii. The default custodial sentences shall run consecutively.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 16<sup>TH</sup> DAY OF JUNE 2025**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Mutuma for the Appellant

Respondent Absent

Tony Court Assistant.

