



**Republic v M’Impwi (Criminal Appeal 136 of 2022)  
[2025] KEHC 10859 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10859 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL APPEAL 136 OF 2022**

**SM GITHINJI, J**

**JULY 24, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JUSTUS MUGAA M’IMPWI ..... ACCUSED**

*(An appeal from the Ruling of Hon. Sogomo G. (P.M) in  
Tigania Traffic Case No. 2023 of 2019 delivered on 17/11/22)*

**JUDGMENT**

1. The appellant herein, one Justus Mugaa M’Impwi, was charged in the lower court with the offence of causing death by dangerous driving Contrary to Section 46 of the *traffic Act* Cap 403 laws of Kenya.
2. The particulars of the offence are that on the 28<sup>th</sup> day of October 2018 at about 18:40 hours along Meru Maua road at Lukununu area of Tigania West Sub-County, within Meru county, the appellant being the driver of Motor Vehicle Reg. No. KCG 761 Toyota double cabin, drove the said vehicle dangerously and without due care and attention to other road users and caused the death of Nathan Koome.
3. The prosecution side called four (4) witnesses and their case is that on 28<sup>th</sup> October, 2018 PW1 was from Ngundune at about 6:30pm, and was riding a motorcycle towards home along Meru-Maua road. At Kalerene area, using his Motorcycle side mirror, he saw a vehicle approaching from behind heading in the same direction he was. The vehicle was a Toyota Double Cabin. Reg. No. KCG 761T, Black in colour with a stripe of white on its Cabin. The vehicle was at high speed and he moved on the left side to give it way. The vehicle passed him and hit a pedestrian ahead, who was walking along the road on the left side.



4. The vehicle stopped a short distance ahead of the point of impact. The driver peeped outside through the window, at the victim. He then dismissively waved away with his hand and drove off. He went and reported at Nchiru Police Station.
5. PW-1 took the cell phone of the victim. The victim had injuries on the forehead. He then went and reported the case at Tigania Police Station. He returned to the scene with Police Officers who took the victim. He was rushed to Miathene Hospital and then to Meru Teaching and Referral Hospital where he passed on that night.
6. The postmortem was conducted on deceased's body on 5<sup>th</sup> November, 2018. The doctor who conducted the postmortem noted that the deceased had several bruises on the right shoulder, both elbows, knees and ankles. There was a sutured cut wound on the right frontal area of the head, measuring 2x2 cm. The temporal parietal area had 3x4 cm cut wound. He had deep wound of the Mastoid area measuring 1x2 cm. In the Respiratory area, he had 1000ml pool of blood. He had ruptured aorta and ruptured left chamber of the heart.
7. The doctor was of the opinion that the cause of death was ruptured aorta and ruptured left chamber of the heart, causing a massive internal bleeding and hypovolemic shock, due to blunt force in the thoracic area.
8. The police investigated the case and according to PW-4, the accident vehicle was headed to Kianjai direction from Meru direction, and the victim was crossing the road from the left to right facing Kianjai. He was hit by the left side of the vehicle and the point of impact was in the middle of the road. Measurement shows it was 3-5 metres inside the road.
9. The appellant gave sworn testimony in his defence and called two other witness. His defence is that on the material date he was driving the alleged Motor Vehicle from Muriri heading to Meru Town. When he passed Ngundune area, near Kalerene, someone emerged from the left side of the road and jumped into the road suddenly. He applied brakes but in vain as he had already hit the pedestrian. He was on his correct lane. He stopped but a hostile crowd started building up at the scene and was prompted to drive off to Nchiru Police Station where he reported the accident. The victim had cell phone earphones stuck to his ears during the accident. The vehicle was detained for inspection. At the time of the accident, he was driving at 80Kph.
10. DW-2 who is a minor stated on the material day and time she was going to the shop to buy salt, having been sent by her grandmother, the DW-3 in this case. She witnessed the accident. The vehicle was heading towards Kianjai. The victim had earphones on his ears and was crossing the road when the accident occurred. He never checked on the road to ensure it was safe before crossing, and was hit by the vehicle. She returned to inform DW-3 about the accident. DW-3 visited the scene. She saw the victim in the middle of the road.
11. The trial court evaluated the evidence and found the appellant guilty of the offence. He was accordingly convicted and fined 200,000/= in default to serve 3 years imprisonment. He was also disqualified from holding a driving license for a period of 3 years.
12. Dissatisfied with the said conviction and sentence, the appellant preferred an appeal to this court raising 13 grounds of appeal in his petition of appeal dated 6<sup>th</sup> September, 2022.
13. The appeal was canvassed by way of oral submissions.
14. Mr. Mutuma, the Advocate for the appellant submitted that the evidence of PW-1 was unreliable. It is in want of corroboration in accordance to section 124 of the [Evidence Act](#).



15. The evidence is unreliable as it is contradicted by that of other prosecution witnesses. PW-1 alleged the appellant's Motor Vehicle was black in colour with a white stripe in the cabin. However, the investigating officer stated the vehicle was grey in colour.
16. The witness also stated in his evidence-in-chief that the victim was walking along the road on the left side. In his statement to the police he stated the victim was crossing the road. When the statement was placed before him he recanted it.
17. The trial Court shifted the burden of proof to the appellant. The court dismissed the statement of PW-1 made to the police and also the evidence of the Investigating Officer, saying it was pure lies.
18. The evidence of the Investigating Officer and the defence case shows the point of impact was at the middle of the road.
19. They relied on the following decisions:-
  1. Criminal Case No. 13 of 2003, *Republic v Beth Wangari Kimangu* [2003] eKLR.
  2. Criminal Appeal No 123 of 2015, *Kennedy Mulandi Malinda v Republic* [2017] eKLR.
  3. Criminal case No. 31 of 2013, *Republic v Bernard Obunga Obunga* [2015] eKLR.
20. They urged the court to quash the conviction and sentence, and order refund of Cash Bail paid by the appellant of 200,000/=.
21. Madam Adhi for the prosecution opposed the appeal and submitted that the case was proved by the prosecution beyond reasonable doubt. She averred that in the case the prosecution had obligation to establish that:-
  1. The appellant was driving the subject motor vehicle.
  2. He drove the said motor vehicle recklessly or at a speed that was dangerous to the public.
  3. His action caused the death of the deceased.
22. On the first issue the counsel argued that there was no contention that the appellant was driving motor vehicle Reg. No. KCG 761 T which was involved in the accident.
23. On the second issue she argued that the evidence of PW-1, an eye-witness shows that the vehicle was driven at excessive speed and PW-1 had to swerve to the left to avoid being hit by it. It passed him and hit the pedestrian ahead. The accident happened at 6:30 pm when visibility was still clear. If the appellant was keen, he would have seen the pedestrian in good time and avoided the accident. She relied on the case of *Peter Nguu v Republic*, Criminal Appeal No. 56 of 2019 [2021] eKLR.
24. As an appellate court of the first instance, I have the duty to re-evaluate the evidence and arrive at an independent decision. I have therefore re-evaluated the charge, evidence adduced at the trial court, judgment of the court and sentence meted, grounds of the appeal and submissions by both parties.
25. The issue for determination is whether the offence against the appellant was proved by the prosecution beyond reasonable doubt, and the sentence meted warranted.
26. The offence of causing death by dangerous driving is set out in Section 46 of the *Traffic Act* (Cap 403) Laws of Kenya. To secure a conviction, the prosecution must prove three essential elements beyond reasonable doubt.

These are:-



1. That the driving created an objectively dangerous situation;
  2. That the driver was at fault (failing the standard of a competent-driver)
  3. That this fault caused the accident and substantially contributed to the death of the victim.
27. The case of *Republic v Kibe*, Criminal Appeal 21 OF 2018 [2023] KEHC 17666 [KLR] brought out the aforesaid ingredients vividly.
28. As well stated by the prosecution, there is no dispute that the appellant was driving the Motor vehicle Reg. No. KCG 761T, a Toyota Double Cabin, and that it's the one which hit a pedestrian, one Nathan Kaume, causing his death.
29. The only disputed issue is whether the appellant drove the said Motor vehicle dangerously, thereby causing the alleged accident. PW-1 the alleged eye witness stated the said Motor Vehicle was driven at a high speed. He did not rate the speed in Kilometers per hour. "High speed" is relative. During cross-examination he stated the motor vehicle stopped 15 metres from the motorcycle after the accident. His Motor cycle was behind the victim and the vehicle. If the vehicle stopped 15 metres from the Motor cycle, the distance must have been lesser from the point of impact, which does not suggest the vehicle was at high speed.
30. PW-1 though recanted his statement to the police, had disclosed in it that the victim was crossing the road. The evidence of the Investigating Officer supports that position as well as the evidence of the appellant and his witness, DW -2. The evidence stands out strongly against that of PW-1 that he was walking along the road on the left side, along the white line. The point of impact indicated as 3 to 5 metres inside the road, stands out against the evidence of PW-1. The court had reliable evidence that the victim was hit while crossing the road, near the middle but for strange reason ignored it and held otherwise. The appellant indicated the victim jumped into the road and had earphones on his ears. The evidence is corroborated by that of DW-2 who indicated the victim crossed the road without first ascertaining it was safe to. He had earphones on. In such circumstances, the appellant could have hardly avoided the accident. There is nothing to show he drove the said vehicle at excessive speed given the circumstances, or dangerously. The ingredient was not proved by the prosecution beyond reasonable doubt, and the trial court erred in finding otherwise. I therefore find the appellant was wrongly convicted of the offence charged with. The conviction is quashed as prayed, as well as the sentence. The 200,000/= Cashbail paid be refunded to the appellant. Order for cancellation of his driving license for a period of 3 years is vacated.

**DATED AND DELIVERED AT MERU THIS 24<sup>TH</sup> JULY, 2025**

**S.M. GITHINJI**

**JUDGE**

Appearances:-

Mr. Mutuma for the Appellant.

Ms. Adhi for the Respondent.

