



REPUBLIC OF KENYA

IN THE HIGH COURT AT KERICHO

HIGH COURT CRIMINAL APPEAL NO. 26 OF 2020

SIMON NJENGA WANJIRU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the conviction and sentence by Hon. E. W KARANI (RM) in Kericho

Traffic Case No. 771 of 2018 delivered on 30/4/2020)

J U D G M E N T

1. The Appellant was convicted with the offence of causing death by dangerous driving Contrary to Section 46 of the Traffic Act Chapter 403 Laws of Kenya and he was sentenced to pay a fine of Kshs. 100,000/= in default to serve five (5) years imprisonment.
2. The particulars of the charge were that on 18/6/2017, at DC's Junction along Litein-Sotik Road within Kericho County, the Appellant being the driver of Motor Vehicle Registration No. KAW 029H Nissan Matatu drove the said Motor Vehicle at a speed or in a manner which was dangerous to the Public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of Traffic which was actually at the time or which might reasonably be expected to be on the road and rammed into Motorcycle Reg. No. KMEC 528T make Boxer and caused the death of a passenger by name JOHN KIPRONO LANGAT.
3. The Appellant pleaded not guilty to the charge and the Prosecution called several (7) witnesses whose evidence in summary was that at the material time of the offence which was at 4.30 pm on 18/6/2017, PW.3 LEONARD LANGAT was riding his Motor Cycle Reg. No. KMEC 528T from CHEPWAGAN Road heading to DC's Office in LITEIN carrying two passengers when he was hit by Motor Vehicle Reg. No. KAW 029 H Nissan Matatu as he was turning into the DC's Office.
4. PW.4, FREDRICK CHERUIYOT was riding on the Motor Cycle with the deceased when the Accident occurred. Both pw.3 and PW.4 were injured in the accident but the deceased sustained fatal injuries.
5. The Appellant said in his defence that the Motor Cycle suddenly appeared on the road and it hit his Motor Vehicle. The Appellant said he stopped 20 metres ahead and saw the occupants of the Motor Cycle on the road. The Appellant said he went and hid at Kaplong till evening and he went away since he feared for his life. The owner of the vehicle went for the Motor Vehicle and the Appellant found another job which he did for one year before he was arrested.
6. The Trial Court found the Appellant guilty as charged and convicted him and sentenced him to pay a fine of kshs. 100,000/= in default to serve five (5) years imprisonment.
7. The Appellant has now appealed against both sentence and conviction on the following grounds:-
 - (i) THAT he is remorseful for the offence he committed.
 - (ii) THAT he is a first offender and further that he has spent two years in custody and he has learnt his lesson.
 - (iii) THAT his health is at stake due to Peptic Ulcers and he is seeking non-custodial sentence or a lesser sentence.
8. The Appellant is basically seeking leniency on the sentence meted. I have considered the mitigation filed by the Appellant.
9. The Court considered that the Appellant had ran away for one year before he was arrested and charged.

10. The offence of dangerous driving under section 46 of the Traffic Act Chapter 403 Laws of Kenya carries a maximum, but not a mandatory sentence of ten (10) years imprisonment. The Court has the discretion of cancelling any driving licence or provisional driving licence held by the offender declaring the offender disqualified for holding or obtaining a driving licence for a period of three (3) years starting from the date of conviction or the end of any prison sentence imposed under this section, whichever is the later.

11. In the case of **GOVID SHAMJI VS. REPUBLIC (Unreported) CRIMINAL APPEAL NO. 30 OF 1975 (Nairobi)** Madan and Chesoni JJ (as they were), had this say about the principle of sentencing persons convicted of a traffic offence under Section 46 of the Traffic Act Chapter 403 Laws of Kenya :-

“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 interest 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.”

12. The Court of Appeal in **TIMOTHY ORWENYO MISIANI VS. REPUBLIC 1979 KLR 285** Porter JA (as he then was) held that, although there is a maximum penalty for causing death by dangerous driving, a custodial sentence does not necessarily serve the interests of justice as well as the interests of the public, but there are cases where a custodial sentence is merited, for example, when there is a compelling feature such as an element of intoxication or recklessness.

13. I therefore allow the appeal against sentence and proceed to review the sentence by the trial magistrate.

14. In exercise of the powers vested in this Court vide section **354 (3) (a) and (b) of the Criminal Procedure Code Chapter 75 Laws of Kenya**, I find that the period of five (5) years excessive, I hereby reduce the sentence to the period already served. He has already served close to two (2) years.

15. The Appellant is also disqualified from holding a driving licence for a period of two (2) years from the date of his release from prison.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 1ST DAY OF OCTOBER, 2021.

A. N. ONGERI

JUDGE