



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

(CORAM: CHERERE-J)

CRIMINAL APPEAL NO. 159 OF 2018

BETWEEN

JOHN MURIUNGI.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(An appeal from the sentence in Traffic Case Number 78 of 2012 in the Principal Magistrate's Court at Tigania by Hon. P.M. Wechuli (SRM) on 04.12.2018)

JUDGMENT

The Trial

1) **JOHN MURIUNGI (Appellant)** has filed this appeal against sentence on one count of causing death by dangerous driving contrary to section 46 of the Traffic Act (**the Act**). The brief particulars of the charges are that: -

On 13th July, 2012 at about 1830 hrs along Kirindine-Ruiri road in Tigania West District being driver of motor vehicle KDJ 436 Make Datsun Pick-up drove the said vehicle, on a public road at a speed or in a manner that was dangerous to the circumstances and amount of traffic at the time causing the death of CHARLES GITONGA

Prosecution case

2) The prosecution called seven (7) witnesses in support of its case. From the totality of the evidence, the trial court found that the prosecution had proved beyond reasonable doubt that Appellant drove dangerously on the lawful lane of the deceased who was cycling thereby causing his death.

3) On 04th December, 2018, Appellant was convicted and sentenced to serve 5 years' imprisonment.

The appeal

4) Aggrieved by sentence, Appellant lodged the instant appeal on 19th December, 2018. From the grounds of appeal and written submissions filed on 07th September, 2020, Appellant urged the court to consider reducing the sentence on the ground that he is a first offender, he was not given an option of a fine, is sickly and is remorseful.

5) Ms. Mwaniki, Learned Counsel for the state opposed the appeal and submitted that the conviction and sentence were lawful. Reliance was placed on

Analysis and determination

6) I have considered the grounds of appeal, the record of the lower court and the submission's made by the appellant and the state.

7) As regard sentence, this court is aware that it cannot interfere with the exercise of discretion by the trial magistrate's court when

sentencing the Appellant unless it is demonstrated that the court acted on wrong principle, ignored material factors; took into account irrelevant considerations; or on the whole that the sentence is manifestly excessive. In Ahmed Abolfathi Mohammed & another v Republic [2016] eKLR, the Court of Appeal as follows:

“As what is challenged in this appeal regarding sentence is essentially the exercise of discretion, as a principle this Court will normally not interfere with exercise of discretion by the court appealed from.

8) In Bernard Kimani Gacheru V Republic [2002] eKLR, the Court of Appeal held:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with the sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist. (See also Wanjema v. Republic [1971] E.A.493.

9) Section 46 of the Traffic Act which creates the offence under which Appellant stands convicted attracts a maximum penalty of 10 years' imprisonment. The sentence imposed on the Appellant is therefore lawful and the trial court rightly exercised its jurisdiction. In Govid Shamji -vs- Republic Criminal Appeal No. 30 of 1975) (unreported) it was held:

‘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 interest 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.’

10) Whereas there is no dispute that a life was lost, there is no evidence of intoxication or recklessness. Appellant is a first offender. Generally, where a person is said to be a **first time offender**, the court usually imposes a lesser **sentence** as opposed to if the accused was a repeat offender. This view is subject to the discretion of the court as other factors such as aggravating circumstances are put into consideration in deciding the appropriate sentence in the circumstances of each case.

11) Appellant has expressed remorse for his actions. Accordingly, I allow the appeal, set aside the sentence of five years' imprisonment imposed by the trial court and substitute it with a term of **3 years from 04th December, 2018.**

DATED THIS 04th DAY OF November 2021

WAMAE. T. W. CHERERE

JUDGE

Court Assistant - Kinoti

Appellant - Present in person

For the State - Ms. Mwaniki