

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.9 OF 2020

THOMAS MUTUNGI WAIRIMU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Thomas Mutungi Wairimu was convicted of the offence of **causing death by dangerous driving** contrary to **Section 46** of the **Traffic Act**. The trial court held that the prosecution had established, to the required standard of proof beyond any reasonable doubt, that on 15th April 2019 along Northern Bypass road, the Applicant drove motor vehicle KBH 937D make Nissan Caravan in such a careless and negligent manner that it caused the same to collide with two motor vehicles as a result of which a driver in one of the motor vehicles was fatally injured. The Applicant was sentenced to pay a fine of Kshs.450,000/- or in default serve three years imprisonment. The sentence was imposed on 15th October 2019. The Applicant did not pay the fine. He is serving the default sentence.

He has applied to this court to have the fine that imposed upon him by the trial court reduced. He proposes the amount of Kshs.100,000/- that he deposited as cash bail be converted to a fine. He pleaded with the court to take into consideration the fact that, being the breadwinner of his family, his family had suffered during the period of his incarceration. He pleaded for the court to exercise leniency on him. Ms. Chege for the State opposed the application. She was of the view that the punishment fitted the crime. If there was any reduction of the fine to be considered, then the same should be reduced to Kshs.300,000/-. Otherwise she was of the view that the Applicant's dangerous driving resulted in a loss of life which cannot be recovered.

This court is being called upon to revise a sentence made by the trial court. When the Applicant was sentenced by the trial magistrate, that court was exercising judicial discretion. The Court of Appeal in **Ahmad Abolfathi Mohammed & Another -vs- Republic Criminal Appeal No. 135 of 2016** (unreported) held at Page 25 thus:

*“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 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 **Bernard Kimani Gacheru v. Republic, Cr App No.188 of 2000** this Court stated thus:*

“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 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, any one of the matters already stated is shown to exist.”

In the present application, it was clear to the court that the Applicant is not alleging that the trial court wrongly exercised its jurisdiction when it sentenced him for committing the offence. The evaluation of this court of the sentence meted on the Applicant leads it to the conclusion that the same was neither harsh nor excessive taking into consideration that a human life was needlessly lost. While this court empathizes with the Applicant's situation, the interest of the victim of crime must be balanced with the Applicant's mitigating circumstances. This court is not persuaded that the Applicant made a case for this court to grant the request for reconsideration of the sentence meted on him by the trial court.

In the circumstances therefore, the Applicant's plea for reduction of the fine that was imposed by the trial court is hereby disallowed. However, the default custodial sentence that the Applicant is serving is hereby reduced from three (3) years imprisonment to two (2) years imprisonment with effect from 15th October 2019 when the Applicant was sentenced by the trial court. It is so ordered.

DATED AT NAIROBI THIS 8TH DAY OF JULY 2020

L. KIMARU

JUDGE