

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.18 OF 2018

MICHAEL MUKOYANI LUCAS.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Michael Mukoyani Lucas was convicted of the offence of **causing death by dangerous driving** contrary to **Section 46** of the **Traffic Act**. The particulars of the offence were that on 5th August 2016, the Applicant being a driver of a Toyota matatu, drove the said motor vehicle in a dangerous manner to the public that he caused the death of Hellen Wanjiku Ngungi, a pedestrian. The Applicant was sentenced to pay a fine of Kshs.500,000/- or in default he was to serve three (3) years imprisonment. His driving licence was also ordered cancelled. The Applicant is serving the default sentence. The Applicant has applied to this court for review of sentence. He pleads with the court to review his sentence and consider sentencing him to serve a non-custodial sentence. He tells the court that he is remorseful. He is a first offender and regrets the accident that caused the death of the pedestrian.

During the hearing of the application, this court ordered a probation report to be prepared. The probation report was submitted to the court. It is important to point out that prior to the initial sentencing of the Applicant, the trial court had ordered for a probation report to be prepared. That probation report and the one ordered by this court tallies in one material respect: the family of the deceased was opposed to the Applicant being ordered to serve a non-custodial sentence. Their opposition is based on the fact that, the Applicant, had during the pendency of the trial confronted the family of the deceased and berated them for following up the traffic charge yet, in his view, the insurance company would compensate them. To the family of the deceased, this comment was like an insult added to injury. This court is required to consider the views of the victims of crime before reaching its verdict on the sentence to mete out on the convict.

In the present application, it was clear that the Applicant's conduct towards the family of the deceased was not only callous but an indication of a person who was not remorseful for the offence that he had committed. The feeling of the victim's family was still raw when they were interviewed for the purposes of this application. This court cannot ignore the family's feelings in the circumstances.

In the premises therefore, this court finds that the Applicant's application to have his sentence reviewed has no merit and is hereby dismissed. The Applicant shall serve the sentence imposed by the trial court. It is so ordered.

DATED AT NAIROBI THIS 4TH DAY OF OCTOBER 2018

L. KIMARU

JUDGE