

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL APPEAL NO. 106 OF 2016

(From original conviction and sentence Traffic Case NO. 1550 of 2015 of the CM's Court at Maua on 23/2/2017 by J.W. WANGANGA - RM

SIMON MWIRIGI.....APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

The appellant was charged with two counts of causing death by dangerous driving contrary to section 46 of the Traffic Act Cap. 403 Laws of Kenya. The particulars of the offence were that the appellant on the 14th of March 2015 at around 3.30pm along Kiengu – Kiutine road in Meru County being the rider of motor cycle registration number KMDJ 185Y dangerously rode the said motor cycle without regard to the circumstances of the road including the amount of traffic and in the process hit two pedestrians who lost their lives. The charges were separately drawn for each of the victim of the accident. The appellant was also charged with the offence of riding a motor cycle on a public road without a driving licence contrary to section 103B (5) of the Traffic Act and riding a motor cycle without insurance contrary to section 103B(3) of the same act.

The appellant pleaded guilty to the charges. He was sentenced to pay a fine of kshs.100,000/= or in default to serve 2 years imprisonment for the 1st two counts of causing death by dangerous driving. He was fined kshs.5,000/= or in default 3 months imprisonment for the other two counts. The grounds of appeal are that;

- i. The trial court erred in law by not indicating whether the sentence is to run consequentially or concurrently taking into account the fact that the offences flowed from the same incidence.***
- ii. The plea was not equivocal as the appellant was appearing in court for the first time and was confused.***
- iii. The sentence of six years imprisonment and the total fine of kshs.220,000/= is excessive.***

The appellant informed the court that because the trial court did not indicate how the sentence is to run, he is serving six (6) years imprisonment. He is suffering from ulcers and his condition is deteriorating. He is the sole bread winner of his young family. The sentence is excessive and the fine is exhibited. Mr. Odhiambo prosecution counsel informed the court that the sentence imposed by the trial court is lawful and lenient. Two lives were lost.

The record of trial court show that the appellant was charged before the court on the 16th of March 2015. The appellant pleaded guilty to the five (5) counts of the charge but pleaded not guilty to the fourth count. The facts were read and the appellant informed the court that the facts were correct. He was sentenced for the counts he pleaded guilty and was granted bail of kshs.200,000/= with one surety for the other count. On 1st October 2015 the appellant informed the court that he wanted to plead guilty to the other charges. The plea was once again taken on 7th October 2015. The appellant pleaded guilty to all the other counts. The facts were read and the appellant confirmed that the facts were correct. He was convicted on the same day. Given the record of the trial court I do find that the plea was an equivocal.

The conviction is proper. The appellant had humble time from March 2015 to October 2015 to reflect on his plea. The appeal on conviction is disallowed.

The trial court did not indicate whether the sentence is to run concurrently or consequentially. The sentence was imposed on the 7th of October 2015. The appellant has by now almost served two (2) years imprisonment. He was on remand from 14th March 2015 up to the date of conviction, a period of about seven (7) months. It is unfortunate that two lives were lost. The accident motor cycle had no insurance. However, the families of the victims are at liberty to sue the owner of the motor cycle as well as the appellant and claim damages. It is not clear how the appellant is serving six (6) years. Even if the sentence is to run consequentially, the maximum period would be four years and six months. The appellant has by now served the three (3) months sentence for count three (3) and four (4). Since the incidence occurred on the same date, I do find it that it would be unfair to have the sentence run consequentially. It is true that the sentence is lenient. I do not wish to enhance the sentence. Since the trial court did not indicate how the sentences is to run, I will rectify that anomaly by holding that the sentence is to run concurrently.

In the end, the appeal on conviction is dismissed. The appellant shall pay a fine of kshs.100,000/= and in default to serve two years imprisonment for count one and two. The sentence to run concurrently. He is also sentenced to pay a find of kshs.5,000/= or in default serve three (3) months imprisonment for count three and four. In effect therefore, the appellant shall serve two (2) years imprisonment from the date of his conviction. The purported six (6) years imprisonment is hereby set aside and replaced with two (2) years imprisonment from the date of conviction.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 19TH DAY OF JULY 2017

SAID CHITEMBWE

JUDGE