



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL APPEAL NO 58 OF 2015**

**(Appeal against Conviction and Sentence in Murang'a CM Traffic Case No 408 of 2011 – J J Masiga, RM)**

**JOHN MAINA GITABI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

1. The Appellant **John Maina Gitabi** was convicted after trial of ***careless driving of a motor cycle on a public road*** contrary to **section 49(1)** of the ***Traffic Act, Cap 403***. It was alleged that on 28/05/2011 at about 6.00 p.m. along Uhuru Road within Murang'a Town in Murang'a Country, being the rider of motor cycle registration number KMCH 227Z make Jincheng, rode the said motor cycle on the said road without due care and attention, or without reasonable consideration for other persons using the road and hit one **Maurine Wanjiru Kimani**, a juvenile pedestrian, thereby causing her serious injuries (namely, a fractured left leg ankle). He was sentenced to 3 years of probation. He has appealed against both conviction and sentence. He was admitted to bail by this court pending disposal of his appeal.

2. Learned prosecution counsel conceded the appeal upon the ground that the offence was not proved against the Appellant beyond reasonable doubt.

3. I have perused the record of the trial court. The investigating officer of the case (PW5) found that the Appellant was to blame for the accident only to the extent of 60%. It is not clear from his testimony how he arrived at that figure. But his testimony means, in corollary, that the victim of the accident (PW4) was to blame to the extent of 40%.

4. In all criminal trials the prosecution must prove the guilt of the accused **beyond reasonable doubt**. If the Appellant in this case was to blame only to the extent of 60% for the accident, it cannot be said that the offence of careless driving/riding his motor cycle was proved against him beyond reasonable doubt. If the complainant was to blame to the extent of 40%, that must raise a serious doubt about the guilt of the Appellant, which doubt should have been resolved in his favour.

5. In the event I will allow this appeal in its entirety. The Appellant's conviction is hereby quashed and the sentence of 3 years of probation set aside. It is so ordered.

**DATED AND SIGNED AT MURANG'A THIS 14<sup>TH</sup> DAY OF JULY 2016.**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANGA THIS 15<sup>TH</sup> DAY OF JULY 2016**

