

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

CRIMINAL APPEAL NO. 97 OF 2013

BETWEEN

TITUS OCHIENG ODOUGI APPELLANT

AND

REPUBLIC RESPONDENT

(Being an Appeal from Original Conviction and Sentence from Nyando Senior Principal Magistrates Court, Hon B.M. Kimutai, SRM dated 13th August 2013 in Traffic Case No. 351 of 2013)

J U D G M E N T

1. **TITUS OCHIENG ODOUGI**, the appellant herein, pleaded guilty to three counts of causing death by reckless driving contrary to **section 46** of the *Traffic Act (Chapter 403 of the Laws of Kenya)*. He also pleaded guilty to one count of failing to report an accident contrary to **section 73(3)** of the *Traffic Act*.
2. According to the particulars and facts read in the lower court, he was driving a Mercedes Benz registration No. KPL 503 along Katito-Kendu Bay Road on the August 2013. It was stated that he drove the vehicle recklessly and caused the death of three pedestrians. **JACK OMONDI OGUTU, MERCYLINE ATIENO** and **WYCLIFF OJWAN'G**. He thereafter failed to report the accident.
3. He was sentenced to 5 years imprisonment on the first three counts and on the fourth one 2 months imprisonment in default of paying a fine of Kshs.3,500/=. He appealed against conviction and sentence although at the hearing of the appeal, he urged the court to reduce his sentence. Learned counsel for the state does not object to the reduction in the sentence.
4. I however note, that the learned magistrate failed to state whether the sentence would run concurrently or consecutively though the remand warrant states that the sentences run consecutively. As the offences were committed in one transaction, the general rule is that the sentences are concurrent unless the court orders otherwise for a good reason (see **Para. 7.13** of the *Sentencing Policy Guidelines*).
5. In this case, the appellant has been in prison since the year 2013. Accordingly, the sentence on counts I, II and III are ordered to run concurrently and the same are reduced to time served. However the appellant's driving license shall be suspended for a period of 5 years from 16th August 2013.
6. The appellant is therefore released forthwith unless otherwise lawfully held.

DATED, SIGNED and DELIVERED at **KISUMU** this 18th day of July, 2016.

D. S. MAJANJA

JUDGE

Appellant in person.

Ms Chelangat, Prosecution Counsel, instructed by the Director of Public Prosecutions for the respondent.