



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
CRIMINAL APPEAL NO. 19 OF 2016

JAMES GITIYE NKARACHIA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in TR 305/15 at Embu

Chief Magistrate's Court by Hon. R.O. Oigara - PM on 29th September, 2015)

JUDGEMENT

1. The appellant was convicted on his own plea of guilty to 5 years imprisonment in respect of causing death by dangerous contrary to section 46 of the Traffic Act (Cap 403) Laws of Kenya (count 1) and 6 months imprisonment in respect of failing to report an accident contrary to section 73 (1) as read with section 75 of the Traffic Act. (count 2). Both sentences were ordered to run concurrently.
2. He has raised three grounds in support of his petition to this court. In ground 1, he has faulted the trial court for failing to follow the right procedure before entering the plea of guilty to the charges. In this regard, the record of the trial court shows that the two charges were read over to the appellant and in response thereto he stated as follows: “*Count 1: Accused: true. Count 2: Accused: True*”. This was followed by an outline of the statement of facts in support of the charges. In the statement of facts, the prosecutor stated that on 2nd March 2010 at 10.30 p.m, 4 police officers under the command of the now deceased Sgt Bernard Ndungu were manning a road block at sewage along Embu – Nairobi Road.
3. At the material time, motor vehicle registration No. KBB 158P Toyota Matatu driven by the appellant was heading to Meru from Nairobi. The police flagged it down to stop using their torches. Instead, the appellant tried to attempt to pass the spikes on the pavement of the road and in the process he knocked down Sgt Bernard Ndungu. Some of the police officers took him to hospital. The said motor vehicle never stopped until it was shot down. The appellant was not arrested until 26th September 2015 when police got information that he was admitted at Tigania West in Meru County. He was then arrested and charged with these two offences. After the statement of facts was read, the accused responded by stating that: “*Accused: Facts are correct*”. Thereafter, the court made an order convicting and sentencing the appellant on those two counts.
4. In the circumstances, I find that the trial court substantially followed the right procedure in taking the plea of guilty in respect of those two counts. In his submissions, counsel submitted that the appellant was taken from a hospital in Meru and then charged in court. According to counsel, there ought to have

been a mental assessment report before a plea was taken. In this regard, the accused is recorded to have stated that: “*Accused: I was injured I was walking. I am ready to take plea*”. It is common to present a mental assessment report in respect of those persons who are charged with murder cases. This practice has not been extended to those who are charged with offences of causing death by dangerous driving. I therefore find that the appellant's response to the plea was clear. There is no merit in this ground of appeal and it is hereby dismissed.

5. In ground 2, the appellant has faulted the trial court for failing to observe the provisions of section 75 of the Traffic Act and section 207 of the Criminal Procedure Code (Cap 75) Laws of Kenya. Section 207 of the Criminal Procedure Code directs that the substance of the charge should be stated to the accused person by the court. Thereafter the accused shall be asked whether he pleads guilty or not. His admission shall be recorded as nearly as possible in the words used by him and the court shall convict him and pass sentence. This procedure was approved by the Court of Appeal in *Adan v R (1973) EA 445*. That court held that:

i. “The charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands.

ii. The accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded.

iii. The prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts.

iv. If the accused does not agree with the facts or raises any question of his guilt his reply must be recorded and charge of plea entered.

v. If there is no change of plea a conviction should be recorded and a statement of facts relevant to sentence together with the accused's reply should be recorded.”

The record of the trial court shows that this procedure was followed and therefore this ground of appeal is without merit and is hereby dismissed.

6. In ground 3 the appellant has faulted the trial court for not complying with the provisions of section 169 of the Criminal Procedure Code (Cap 75) Laws of Kenya. The provisions of that section require a trial court to set out the points for determination and reasons for the decision in respect of those points, where a case has been heard and decided on the merits. In this case the point for determination was whether or not the plea was unequivocal or not. I find that the plea of guilty and conviction was unequivocal. This ground is without merit and is hereby dismissed.

7. The appellant has not challenged the sentence of five years imprisonment in count 1 and 6 months in count 2 and I am not therefore called upon to make any findings in that regard.

8. In the light of the foregoing, the appeal of the appellant is hereby dismissed in its entirety.

JUDGEMENT DELIVERED, DATED and SIGNED in open court at **EMBU** this **6th** day of **OCTOBER 2016**.

In the presence of Mr E. Njiru holding brief for Mr Otieno for a plaintiff and Ms Mbae for the respondent

Court clerk Njue

J.M. BWONWONGA

JUDGE

06.10.16