



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 30 OF 2012

STEPHEN NTHUVA MUMO APPELLANT

VERSUS

REPUBLIC

(Being an appeal from the conviction and sentence of Hon. M.W Murage (CM) delivered on 21/02/2012 in Machakos Chief Magistrate's Court Traffic Case No. 330 of 2012)

(Before Hon. B. Thurania Jaden J)

J U D G M E N T

1. The Appellant, **Stephen Mumo Nthuva**, was charged with the offence 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 “on the 25th day of February, 2011 at about 1840 hrs at **Kyua area** along **Machakos-Kitui road** in **Machakos District** within **Eastern Province**, being the driver of the motor vehicle registration number **KBN 317G Toyota** matatu, drove the said motor vehicle on the said road dangerously by overtaking on the wrong side (left side) and hit motor vehicle registration **Number KBJ 082 A Toyota Caldina Station Wagon** and as a result veered off the road and caused an accident by hitting one pedestrian **Alice Maluki** who died on the spot.”

2. When the Appellant was arraigned before the trial court, he pleaded guilty. The Appellant was convicted and sentenced to serve two (2) years imprisonment.

3. The Appellant was aggrieved by both the conviction and sentence and appealed to this court on the grounds that he was not aware of the charge facing him and that the sentence was harsh and excessive.

4. During the hearing of the appeal, the Appellant stated that he did not understand the language used by the court. The State conceded to the appeal. The State submitted that the language used by the court during plea taking was not indicated.

5. I have perused the lower court record. The language used by the trial court when it was taking plea is not reflected. The plea was therefore not unequivocal.

6. Consequently I quash the conviction and set aside the sentence. The plea to be taken afresh before the **Chief Magistrate's Court** on 19/2/2015.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 12th day of February 2015.

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B. THURANIRA JADEN

JUDGE