



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT MIGORI**  
**CRIMINAL APPEAL NO. 15 OF 2015**

**BETWEEN**

**JUSTUS NYANGI ..... APPELLANT**

**AND**

**STATE ..... RESPONDENT**

*(Being an appeal from the original conviction and sentence in Traffic Case No. 70 of 2015 at Senior Resident Magistrate's Court at Rongo, Hon. J. Mitey, RM dated 26<sup>th</sup> February 2015)*

**JUDGMENT**

1. The appellant was charged with the offence of causing death by dangerous driving contrary to **section 46** of the *Traffic Act (Chapter 403 of the Laws of Kenya)*. He pleaded guilty and was sentenced to 3 years imprisonment. He now appeals against the conviction and sentence.
2. The issue is whether the guilty plea ought to have been entertained by the learned magistrate. Learned counsel for the State, Mr Owenga, concedes that the plea was equivocal and that the appellant should be re-tried.
3. The particulars of the charge against the appellant were as follows;

*On the 6<sup>th</sup> February 2015 at around 7.00 am at Riinya along Awendo-Riinya Murrum road within Migori County in the Republic of Kenya being the driver of a motor vehicle registration number KBA 530T Isuzu FRR drove the said motor vehicle along the said road dangerously and without due care to other road users and hit a motorcycle registration No. KMDM 600F Bajaj which was ahead of him killing the rider namely **ELIJAH ONOLA OZUO** aged 24 years on the spot.*

4. After the charge was read and explained to the appellant he pleaded guilty and the following facts read to him;

*On 6/2/2015 the accused at around 7:00pm was driving motor vehicle registration No.KBA 530T Isuzu FRR lorry along Awendo - Riinya road which he claimed was dusty and could not see properly, he knocked a motor cycle Registration No. KMDM 600F BAJAJ Boxer ridden by Elijah Onola Ozu, who as a result died on the spot.*

*The driver of the lorry did not stop and the accident was later reported to the police who visited the scene and made their investigation on ground. On a follow up, they arrested the*

*accused. While at the scene of accident the body of the late Elijah Onola was taken to Rapcom centre mortuary where postmortem was later conducted.*

*The police drew a sketch plan on the scene of accident. Later the motor vehicle KBA 530T was subjected to inspection and the motor cycle as well.*

*I wish to produce the postmortem in respect of Elijah Onola as P exhibit 1, sketch plan of scene of accident as exhibit 2, together with the legend. Certificate of examination in respect of motor vehicle KBA 530T Isuzu FRR No.VTA 763460 as exhibit 3 and certificate of motor cycle registration KMDM 600F Bajaj Boxer No.VTA 763461 as Exhibit P4.*

*The police upon investigation formed an opinion that accused was careless in his driving thus causing the death of the said motor cycle rider.*

5. **Section 46** of the **Traffic Act** provides as follows;

*Any person who causes the death of another by driving a motor vehicle on a road recklessly or at a speed or in a manner which is dangerous to the public..... having regard to all the circumstances of the case including the nature condition and use of the road and the amount of traffic which is actually at the time or might reasonably be expected to be on the road shall be guilty of an offence whether or not the requirements of Section 50 have been satisfied as regard that offence ..... [Emphasis mine]*

6. A perusal of the facts which were read by the prosecutor do not indicate the manner in which the appellant committed the offence; whether he was driving too fast in the circumstances or how he was reckless. He did not demonstrate through the exhibits that the appellant drove the vehicle recklessly or that he drove it at a speed or in a manner which was dangerous to the public as required by the provisions of the **Act**.
7. Furthermore the facts as read show that the appellant claimed that the road was dusty and that he could not see. This is a relevant factor in considering whether the appellant was reckless. In short the facts do not disclose the offence with which the appellant was charged and the plea was therefore equivocal.
8. As to whether this is a proper case for retrial, I take into account the fact that someone died as a result of the accident which occurred on 6<sup>th</sup> February 2015. As the matter is recent, witnesses are still available and the appellant would not be prejudiced by a trial.
9. The conviction is quashed and sentence is set aside. The appellant shall be re-tried and for that purpose the appellant shall remain in custody and shall appear before the Senior Resident Magistrate Court at Rongo on **8<sup>th</sup> April 2015** for taking of plea.

**DATED** and **DELIVERED** at **MIGORI** this 7<sup>th</sup> day of **April** 2015.

**D.S. MAJANJA**

**JUDGE**

Appellant in person.

Ms Owenga, Principal Prosecuting Counsel, instructed by the Director of Public Prosecutions for the

respondent.