



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 132 OF 2013

AMANI MAZURI HAJI..... APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original Conviction and Sentence in Criminal Case No. 5254 of 2013 of the Chief Magistrate's Court at Mombasa – Hon. Ruguru – SRM)

JUDGMENT

The appellant was Convicted and sentenced to two (2) years imprisonment on the first count and two months imprisonment on the 2nd Count. In the first Count he had been charged with causing death by dangerous driving contrary to section 46 of the Traffic Act.

The particulars being that:-

“On the 3rd day of May, 2013 at around 2100 hours along new Nairobi – Mombasa road near Raffia bags Company in Changamwe Mombasa County being the rider of motor cycle registration No. KMCL 902T make Haojin, rode the said motor cycle along the said public road in a manner which was dangerous to the public having regard to all the circumstances of the case including nature, condition and use of the road and the amount of traffic which is actually at the time of which might reasonably be expected to be on the road, in that while overtaking another motor vehicle he changed lane from left to right without proper clearance of the road and collided with an on coming motor vehicle registration No. KAZ 867 Q make Nissan matatu causing death to a pillion passenger namely Mbwana Mabinu”.

On the 2nd count the appellant was charged with riding a motor cycle on a public road without insurance contrary to rule 25A (4) of the Traffic amendment rules 2009 Laws of Kenya.

A perusal of the record of proceedings in the lower court do not indicate what language was used in the taking of plea.

Article 50(2) which is on fair hearing provides,

“Every Accused person has the right to a fair trial, which includes the right-

(a)

(b) To be informed of the charge, with sufficient detail to answer it.

(c)

(d)

(e)

m. To have the assistance of an interpreter without payment if the Accused person cannot understand the language used at the trial”.

As pointed out Supra there is no indication of what language was used. It is not shown whether it was English or Swahili language.

The appellant was convicted on his own plea of guilty. It can be safe to say that he actively and substantially participated in the conduct of the proceedings (like exhaustively cross-examining Witnesses). His role in these proceedings was peripheral in nature.

A perusal of the facts by the prosecution only indicate that:-

“he changed his lane from left to right in view of overtaking a motor vehicle which was ahead of him, as a result it collided with an on coming motor vehicle”.

It is not stated in which manner this constituted dangerous driving and as such the facts did not disclose the offence of causing, death by dangerous driving.

I find that this is a fair case for retrial. It is accordingly ordered that the finding and sentence by the lower court is hereby reversed and Appellant to be tried by a Court of Competent jurisdiction.

Mention before the Chief magistrate on **15th July, 2015** for plea taking and further orders.

Ruling delivered dated and signed this **9th** day of **July, 2015**.

.....

M. MUYA

JUDGE

9TH JULY, 2015

In the presence of:-

Learned Counsel for the prosecution Miss Nandi

Learned Counsel for the defence Mr. Omari

The appellant present

Court Assistant Musundi

M. MUYA - JUDGE