REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 177 OF 2014

SAMUEL KIPYEGO…….…….. APPELLANT

VERSUS

REPUBLIC…….…….....…RESPONDENT

(From original Conviction and Sentence in Criminal Case No. 2672 of 2014 of the Senior Resident Magistrate's Court at Mariakani – **Hon. Ekhubi - SRM**)

JUDGMENT

The appellant was Convicted and Sentenced to six (6) years imprisonment for the offence of driving a motor vehicle without due care and attention contrary to section 49(1) of the Traffic Act.

The particulars were that:-

> ***"On the 8th day of February, 2014 at about 8:00 pm at Managoni area along Mombasa Nairobi road in Likifi County, being the driver of motor vehicle Registration number KBQ 614 ZE 5979 make FAW Semi trailer did drive the said motor vehicle along the said road without due care and attention in that you failed to give way for the on coming motor vehicle registration number GK A 999F make Mitsubishi pick -up which was traveling in the opposite direction and collided with it as a result, causing injuries to No. 88129 CPL Nicholas Mburugu No. 35241 PC driver Job Oriendo and damages to both vehicles".***

The appellant pleaded guilty to the charges and was Convicted on his own plea.

Before Sentencing he was treated as a first offender.

Section 49(1) of the traffic Act provides,

> ***"Any person who drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road shall be guilty of an offence and liable -***
>
> ***(a) For a first offence to a term of imprisonment not exceeding one year or a fine of not exceeding one hundred thousand Shillings.***

(b) For a second or subsequent offence, to a term of imprisonment not exceeding two years or to a fine not exceeding two hundred thousand shillings".

In the present case the appellant was Sentenced to six (6) years imprisonment. This was clearly an unlawful Sentence and it ought to be disturbed.

The Sentence of six years imprisonment is reduced to a fine of Ksh. 100,000/= in default one year imprisonment from the time of Conviction.

The appeal succeeds to that extent only.

Judgment delivered dated and signed this **8th** day of **July, 2015**

….....

M. MUYA

JUDGE

8TH JULY, 2015

In open Court in the presence of:-

Learned Counsel for the prosecution Mr. Masila

Learned Counsel for the defence Mr. Gakuo

Court Assistant Musundi

M. MUYA – JUDGE

Cash bail to be utilized as fine and balance if any to be refunded to the depositor.

….....

M. MUYA

JUDGE

8TH JULY, 2015