

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

APPELLATE SIDE

CRIMINAL APPLICATION NO. 477 OF 1998

(From Original Conviction(s) and Sentence(s) in Traffic case no. 78 of 1998 of the Principal Magistrate’s Court at Kiambu F.N. MUCHEMI Station andMagistrates Name)

PETER KAGWIMA DAUDI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

This appeal is against sentence only. The appellant was convicted of the offence of Causing death by Dangerous driving c/s 46 of the Traffic act cap. 403 Laws of Kenya. Upon conviction he was sentenced to 5(five) years imprisonment and his licence cancelled for 3 years. The appellant was said to be a first offender aged 40 years old. He had been a driver for 15 years. It has been submitted that this is a case of momentary inattention or misjudgment and on the authority of Orwevyo Missiani -v- The Republic KLR 1979285 the appellant should be fined and disqualified for not more than a short period.

As observed in the said case, this is a case without any “compelling feature such as an element of intoxication or recklessness” such as to justify the imposition of a custodial sentence. I am inclined to interfere with the sentence on the foregoing grounds. Accordingly, I allow the appeal against the sentence imposed by the learned trial magistrate by setting it aside and substituting therefor a fine of kshs. 10,000/- (ten thousand) only in default to serve one year imprisonment. I also hereby reduce the disqualification from driving from three years to one year from the date of conviction.

Orders accordingly.

Dated and delivered at Nairobi this 15th day of December, 1998.

A. MBOGHOLI MSAGHA

JUDGE

MR NJOROGE FOR THE APPELLANT

MR O’MIRERA FOR THE RESPONDENT