

REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAIROBI

CRIMINAL APPEAL 702 OF 92

Ahmed.....appellant

v

Republic.....respondent

Judgment.

The appellant was convicted in the court below of causing death by obstruction contrary to Section 46 of the Traffic Act and was sentenced to 2 years' imprisonment. His appeal to this court is against conviction and sentence. During the hearing of the appeal the appellant's counsel abandoned the appeal against conviction and argued only the appeal against sentence. He submitted that the sentence of 2 years' imposed upon the appellant was in all the circumstances of this case harsh and excessive. He specifically mentioned the age of the appellant (65 years) the fact that he is a sickly man with stomach ulcers and diabetes; he is also said to be the sole bread winner of his family.

The law recognises but not every person who is convicted of causing death by obstruction as dangerous only should be sentenced to imprisonment (Timothy Orwryo Miasin –v- R. (Court of Appeal Criminal Appeal No.39 of 1979) and in a case of causing death by dangerous driving, “a custodial sentence does not necessarily serve the interest of justice as well as the interests of the public”. (See Govind Shamji –v- R. (Criminal Appeal No. 30 of 1975). In my judgment the facts of this case bring it that type of case in which conviction should not entail custodial sentence. The motor vehicle the appellant was driving was standing, it had probably broken down and the fact that the appellant convicted was failure to give a warning of the obstruction. In these circumstance a fine will be an appropriate punishment. For the above reasons the sentence imposed upon the appellant by the court below is set aside and a fine of Kshs.10,000/- in default imprisonment for 12 months substituted therefore. The appellant's driving licence is cancelled and he is disqualified from holding or obtaining a driving licence for a period of 3 years from the date of conviction.