

REPUBLIC OF KENYA

Ahmed v Republic

High Court, at Mombasa

Mbaluto J

December 14, 1992,

Mbaluto J delivered the following Ruling.

The applicant was convicted in the court below of causing death by obstruction contrary to section 46 of the Traffic Act. The particulars of were that on 10th June, 1991 at Miasanyi along the Mombasa-Nariobi Road in Taita/Taveta District of the Coast Province being the driver of motor vehicle registration number TZ 4930/MG.3404 A fiat Trailer, he left the said motor vehicle in a stationary manner causing obstruction which was dangerous to the public and caused the death of one Thiongo Maina. Upon conviction the applicant was sentenced to 2 years' imprisonment. He has lodged an appeal to this court against conviction and sentence and now applies to be released on bail pending the hearing and determination of the appeal.

The application is based on 3 grounds which are described by the applicant, one filed by the applicant's wife and to the other by his learned counsel. In the first ground the applicant claims that he suffers from ulcers and diabetes and that he has been admitted in various hospitals on several occasions for treatment of the two ailments. However, no medical documents have been produced to support these claims and in any event one cannot say that there are no suitable facilities for treating such cases in prison.

As for the second ground the applicant claims that the appeal is likely to take long to finalise by which time the applicant is likely to have served his sentence. However, since I have seen that there not so many appeals in Mombasa, I cannot see why the hearing of this particular one should take long to dispose of. The third ground and the major one is that the applicant's appeal has overwhelming chances of success. During the trial in the court below, there was evidence which the learned trial magistrate was entitled to and which said evidence the believed which showed that the applicant had left his motor vehicle in a stationery manner on a major road without any warning to other motorists that the said motor vehicle posed a danger to motorists.

In my view, that act on the part of the applicant was the cause of the accident. In those circumstances, there is no basis for arguing that the applicant's appeal on conviction has overwhelming chances of success. For the above reasons, the application for bail pending the hearing and determination of the appeal is dismissed.