



REPUBLIC OF KENYA



**Republic v Mwangi (Traffic Case E002 of 2023)
[2023] KEMC 296 (KLR) (23 November 2023) (Sentence)**

Neutral citation: [2023] KEMC 296 (KLR)

**REPUBLIC OF KENYA
IN THE GITHONGO LAW COURTS
TRAFFIC CASE E002 OF 2023
AT SITATI, SPM
NOVEMBER 23, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOSEPH MWANGI ACCUSED

SENTENCE

1. The Accused person was charged with the offence of causing death by dangerous driving contrary to section 46 of the *Traffic Act*. The particulars were that on 24th December, 2022 at about 2055hours along Meru-Nkubu road at Equity area in Imenti Central Sub-County of Meru County, being the driver of motor vehicle registration no. KCB 110G Mitsubishi FH lorry drove the said motor vehicle in a manner which was dangerous to the public having regards to all the circumstances of the case including the nature, conditions and use of the road and amount of traffic which was actually at the time or which might reasonably be expected to be on the road and caused the death of Eric Muthomi Magaju who was a pillion passenger on motorcycle registration number KMFM 125W Captain make.
2. The Accused person denied the charges and was admitted to bond. He represented himself at the trial which was conducted by Prosecution Counsel Jacqueline Njenga and Dixon Kibiti.
3. After a full trial, he was found guilty and was convicted.

The Antecedents of the Accused

4. Miss Wamboi Mugo, learned Prosecution Counsel informed the Court that the accused person had no prior convictions and may be treated as a first offender.



Mitigation by the Convicted Person

5. Joseph Mwangitold the court that he is the sole breadwinner of the family. He added that his father was elderly and depended on him for care and sustenance. He stated that his siblings also depended on him.

Appropriate Sentence

1. The convict has been charged under section 46 of the *Traffic Act* whereunder he is liable to be sentenced up to 10 years' imprisonment and his licence cancelled or suspended for up to 3 years.
2. From the record, he is a first offender and this entitles him to a reduced sentence.
3. Furthermore, he pleads that he relies on the driving job as a source of income for himself, his elderly father and siblings.

Guiding Authorities

6. Before making the final decision, the court found guidance from the following authorities.
 1. Geoffrey Kilonzo Makau v Republic [2020] eKLR (Odunga J.) where learned Judge made an exposition of the principles applicable in considering an appropriate sentence:
 11. This court would need to consider some cases which will assist it to reach a just decision in regard to the sentencing of the accused. In the case R v Scott [2005] NSWCCA 152 Howie J Grove and Barr JJ stated:

“There is a fundamental and immutable principle of sentencing that this sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed in the circumstances of the crime committed...One of the purposes of punishment is to ensure that an offender is adequately punished...a further purpose of punishment is to denounce the conduct of the offender.”
 12. In a New Zealand decision namely R v AEM [200] it was decided:

“... One of the main purposes of punishment...is to protect the public from the commission of such crimes by making it clear to the offender and to other persons with similar impulses that if they yield them, they will meet this punishment.”
 13. In R v Harrison [1997] 93 Crim R 314 it was stated:-

“Except in well- defined circumstances such as youth or mental incapacity of the offender...Public deterrence is generally regarded as the main purpose of punishment, and this objective considerations relating to particular prisoner (however persuasive) are necessarily subsidiary to the duty of the courts to see that the sentence which is imposed will operate as a powerful factor in preventing the commission of similar crimes by those may who otherwise would be tempted by the prospect that only light punishment will be imposed.”
 14. As regards the sentence, the Supreme Court in Francis Karioko Muruatetu & Another v Republic, Petition No. 15 of 2015, as a guide in sentencing held that:

“[71]...the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:



- (a) age of the offender;
 - (b) being a first offender;
 - (c) whether the offender pleaded guilty;
 - (d) character and record of the offender;
 - (e) commission of the offence in response to gender-based violence;
 - (f) remorsefulness of the offender;
 - (g) the possibility of reform and social re-adaptation of the offender;
 - (h) any other factor that the Court considers relevant.
15. In this case the manner in which the death of the deceased was executed reveals a cold scheming perpetrator who is slow in forgiving and one who has poor anger management and lack of self-control. He is a person who was prepared to take his own life after taking that of the deceased.
16. As appreciated by the Supreme Court in *Muruatetu Case* (*supra*):
- “In Kenya, many courts have highlighted the principles of sentencing. One such case is the High Court criminal appeal decision in *Dahir Hussein v. Republic* Criminal Appeal No. 1 of 2015; [2015] eKLR, where the High Court held that the objectives include: “deterrence, rehabilitation, accountability for one’s actions, society protection, retribution and denouncing the conduct by the offender on the harm done to the victim.” The 2016 Judiciary of Kenya Sentencing Policy Guidelines lists the objectives of sentencing at page 15, paragraph 4.1 as follows:
- “Sentences are imposed to meet the following objectives:
1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
 2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
 4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.
 5. Community protection: To protect the community by incapacitating the offender.
 6. Denunciation: To communicate the community’s condemnation of the criminal conduct.”



The sentencing policy states at paragraph 4.2 that when carrying out sentencing all these objectives are geared to in totality, though in some instances some of the sentences may be in conflict.”

7. This Court is accordingly guided by the preceding authority and the following additional authorities relevant to the offence at hand:
 2. Robert Wanjala Shiundu v Republic [2018] eKLR (Aburili J.) upheld a sentence of 1 year imprisonment without the option of a fine for the offence of causing death by dangerous driving after he drove his matatu dangerously and killed a pedestrian.
 3. Benjamin Mwikya Musyoki [2019] eKLR (Mutende J.) where the learned Judge upheld the sentence of a fine of Kshs 60, 000 but reduced the default imprisonment from 3 years to 1 year for one count of causing death by dangerous driving after he ran over a pedestrian. The Judge did not disturb the sentence of a cancellation of the driving licence for 2 years.
 4. Charles Omondi v Republic[2021] eKLR (Cherere J.) upheld a sentence of a fine of Kshs 200, 000/= 1 year imprisonment for the offence of causing death by dangerous driving where the appellant rammed into a motorcycle and killed the pillion passenger on the spot.
 5. Bernard Wambua Kuu v Republic [2021] eKLR (Nyakundi J.) the appellant was sentenced to 2 years’ imprisonment on each of the 8 counts for the offence of causing the death by dangerous driving after he rammed into a matatu and killed the 8 passengers. On appeal, the learned Judge held that this was a reasonable and fair sentence in the circumstances of the case. The Judge did not pass a sentence on the cancellation of the driving licence.
 6. Nicodemus Martin Simatwa v Republic [2021] eKLR (Riechi J.) the appellant was sentenced to 5years imprisonment for causing the death of the deceased who was a pillion passenger on a motorcycle by ramming into the motorcycle and killing her instantly.
8. The facts of the present case show that the convicted person was overtaking when he had no sufficient room to manoeuvre his lorry back into the correct lane and this miscalculation was magnified by the oncoming traffic from the opposite direction. The time was past 630pm and this greatly enhanced the burden of due care as night was setting in. His failure to exercise keenness and attention created danger to the motorcyclist and his pillion passenger while they were in the correct lane. This resulted in the multiple lacerations and cuts to Emily, Susan and Duncan and the demise of Eric Muthomi due to severe haemorrhage secondary to a 35cm by 40cm cut from the lorry’s front side. There was no fault on the motorcyclist and his passengers.
9. He was a first offender but did not plead guilty despite his knowledge of the direct evidence of the case. In his favour, however, is that the failure on his part was shown to be a momentary lapse of judgement and the DPP did not suggest that there was repeated pattern of behaviour where the convict had been dangerously overtaking other motorists and exposing the road users to unnecessary danger. He will be held accountable for his action since, as a lorry driver, he knew well that his big vehicle would require generous and extra-large road space and room not only to overtake but also to regain the lane after completing the overtaking action but he chose to ignore this obvious standard of care.
10. As borne out of the authorities, the courts have discretion to pass sentences that are proportionate to the seriousness and circumstances of each case. Weighing all foregoing factors and authorities, this Honourable Court passes a sentence of a fine of Kshs 200, 000 in default 18months imprisonment. His driving licence will be cancelled for 12months from the date of this judgement. Right of appeal is 14 days.



DATED, READ AND SIGNED AT GITHONGO THIS 23RD NOVEMBER, 2023.

HON. T.A. SITATI

SENIOR PRINCIPAL MAGISTRATE

GITHONGO LAW COURTS

