REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CRIMINAL APPEAL NO. E042 OF 2024

REPUBLIC……APPELLANT

-VERSUS-

GEOFFREY GITHUKU KARUNGARI……RESPONDENT

JUDGMENT

1. **Geoffrey Githuku Karungari,** the Respondent, was charged with the offence of **Causing death by dangerous driving contrary to Section 46 of the Traffic Act.** Particulars were that on the 2nd day of May, 2022, at about 1430hrs at Bomas Area, along Nakuru – Nyahururu road in Subukia Sub-County within Nakuru County, being the driver of the motor vehicle Reg. No. KAG 218S, make Toyota Land Cruiser, did drive the said motor vehicle on the said road in a manner which was dangerous to the public, having regard to all circumstances of the case of traffic which was actually on the road at the time or which might reasonably be expected to be on the road and knocked down one pedestrian namely David Kimani Karanja causing his death.
2. He was taken through full trial, found not guilty and accordingly acquitted under **Section 215 of the Criminal Procedure Code.**
3. Aggrieved, the state appeals on grounds that;

1) ***The learned trial Magistrate erred in law and in fact by failing to consider the evidence adduced with regard to the offence of causing death by dangerous driving contrary to Section 46 of the Traffic Act Cap 403 Laws of Kenya, hence acquitting the Respondent.***
2) ***The learned trial Magistrate erred in law and in fact in not finding that the damages occasioned to the subject motor vehicle Reg. No. KAG 218S make Toyota on the Bonnet, front wing panels and N/S (wear side) smashed indicator together with the Investigating Officer's evidence clearly proved the accident occurred.***
3) ***The learned trial Magistrate erred in law and in fact by not finding that it's the motor vehicle Reg. No. KAG 218S make Toyota that injured the deceased (David Kimani Karanja) fatally, upon knocking him down after having veered off the road to the extreme right and knocked down the deceased who was a pedestrian.***
4) ***The learned trial Magistrate erred in law and in fact by not finding that a conviction can be sustained with the help of a sketch map evidence and other witnesses in absence of an eye witness.***

5) ***The learned trial Magistrate erred in law and in fact in not entering a conviction as against the Respondent.***
6) ***The learned trial Magistrate erred in law and in fact in the manner in which he analyzed the evidence that led him to draw wrong inferences and findings that the Respondent was not to blame for the accidents.***

4. Briefly, facts of the case were that an accident occurred involving a motor vehicle Reg. No. KAG 218S Toyota Land Cruiser which at the time was being driven by the Respondent and a pedestrian David Kimani Karanja, now deceased on 2nd day of March, 2022, that resulted into a fatality.

5. **PW1 Simon Mwangi** was driving a tractor Reg. No. KTCB 124B when he saw a motor vehicle Reg. No. KAG 219S from the opposite direction. He switched on lights and saw a person lying off the tarmac road. He stopped the motor tractor and confirmed that the person was non-responsive. He also noticed that the Land Cruiser front lights having been damaged. He reported the accident to the Chief Kabazi.

6. **PW3 No. 237634 Inspector Peter Wepukhulu** the In-charge Traffic, Subukia Police Station having received a report of the accident visited the scene alongside another police officer. They found the motor vehicle having hit a

pedestrian who died on the spot. He established that the driver was the Respondent herein. He drew a sketch plan of the scene which showed that the motor vehicle veered off its lane and knocked the pedestrian while on the extreme right side of the road facing Nyahururu direction and the pedestrian was thrown off the road, some 4 meters away. That the Land Cruiser moved about 60 meters from the point of impact before stopping in a ditch.

7. Subsequently, a postmortem was conducted on the body of the deceased which was identified by PW2 Samuel Karanja his son, by PW5 Dr. George Biketi. It was established that the cause of death was crush injuries to the head, chest and abdomen following a road traffic accident.

8. Upon being placed on his defence, the Respondent who gave sworn evidence stated that he was on his lane when a person emerged from the right side of the road and started crossing towards the left side. That he swerved to the right to avoid hitting him but the person also decided to go back to the right side hence the motor vehicle hit him and lost control hence it left the road. That he called his friend who reported to the police Subukia who visited the scene 30 minutes later. He denied having been speeding.

9. The trial court analyzed evidence adduced and found that there was no clear evidence showing that the Respondent was wrong. That the prosecution failed to link him to the offence committed.

10. Further, that circumstances in which the deceased met his death did not conclusively show that the Respondent caused the accident, hence the acquittal.

11. This being a first appeal this court is duty bound to re-evaluate afresh evidence adduced before the trial court and come up with its independent conclusions bearing in mind that it did not have the opportunity of seeing or hearing witnesses who testified. In ***Daniel Njuguna Wairimu v Republic [2010] eKLR*** the court held that;

> ***"The duty of the first appellate court is. Its duty is to analyze and re-evaluate the evidence which was before the trial court and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court. There are instances where the first appellate court may, depending on the facts and circumstances of the case, come to the same conclusions as those of the lower court. It may rehash those conclusions. We do not think there is anything objectionable in doing so, provided it is clear that the court has considered the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decision."***

12. The Respondent was stated to have contravened a provision of the law as provided by **Section 46 of the Traffic Act** which stipulate thus;

> ***"Any person who causes the death of another by driving a motor vehicle on a road recklessly or at a speed or in a manner which is dangerous to the public, or by leaving any vehicle on a road in such a position or manner or in such a condition as to be dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road and the amount of traffic which is actually at the time or which might reasonably be expected to be on the road, shall be guilty of an offence whether or not the requirements of section 50 have been satisfied as regards that offence and liable to imprisonment for a term not exceeding ten years and the court shall exercise the power conferred by Part VIII of cancelling any driving licence or provisional driving licence held by the offender and declaring the offender disqualified for holding or obtaining a driving licence for a period of three years starting from the date of conviction or the end of any prison sentence imposed under this section, whichever is the later."***

13. Looking at the particulars of the offence, the State/Appellant sought to prove that the Respondent drove the motor vehicle in a manner that was dangerous to the public. To establish the allegation, the circumstances of the case including the nature, condition and use of the road as reasonably expected had to be taken into consideration.

14. It is complained by the Appellant that although there was no eye witness to the fact of the accident, evidence of the sketch plan was sufficient to help the court enter a conviction in the circumstances.

15. In ***Orwenyo Missiani v Republic [1979] KECA 19 (KLR)*** the Court of Appeal stated that;

> ***"As regards the first question, it is relevant to consider the degree of blameworthiness on the part of the driver which has to be proved by the prosecution before he can be convicted of the offence of causing death by dangerous driving. In R v Gosney [1971] All ER 220 it was held by the Court of Appeal, Criminal Division, that in order to justify a conviction there must have been a situation which, viewed objectively, was dangerous, and also some fault on the part of the driver. In regard to this element of fault, Megaw L J, reading the judgment of the Court of Appeal, said (at page 224):***

"Fault" certainly does not necessarily involve deliberate misconduct or recklessness or intention to drive in a manner inconsistent with proper standards of driving. Nor does fault necessarily involve moral blame ... Fault involves a failure; a falling below the care or skill of a competent and experienced driver, in relation to the manner of driving and to the relevant circumstances of the case. A fault in that sense, even though it might be slight, even though it is a momentary lapse, even though normally no danger would have arisen from it, is sufficient."

16. It is not in dispute that an accident occurred as admitted by the Respondent. The sketch plan shows that the accident occurred along a straight road and the accident having occurred at 1.30pm or thereabout, the visibility was clear. The Respondent was charged, according to PW3 because he left his proper lane and went to the extreme right side and hit the deceased.

17. The motor vehicle was subjected to examination after the accident and was found to have no pre-accident defects. The braking system was intact and holding pressure therefore could not have contributed to the accident.

18. An explanation was rendered by the Respondent in his defence that the pedestrian was on the right side and started to cross the road towards the left. He decided to swerve so as to avoid him but the individual ran back to the right side hence he hit him.

19. To prove whether the Respondent's manner of driving was dangerous. This court must pose the question whether the manner of driving deviated from a standard of driving expected of a careful/prudent driver.

20. This is a case where evidence was not called of the Respondent having willfully deviated from his lane. The speed at which the Respondent was driving was not inquired into. According to the Respondent, he attempted to avoid the accident by swerving to avoid the pedestrian's unexpected action of crossing the road and hence moving into the same direction, the issue of driving dangerously in the circumstances became questionable. It cannot be authoritatively stated that the Respondent disregarded safety of other road users. I say so because possibly the pedestrian's unpredictable act of joining the road without regard to the approaching motor vehicle, evidence that is not disapproved leaves a doubt as to some other alternative action that the Respondent could have taken to avert the action.

21. The Appellant herein was duty bound to prove the case against the Respondent beyond reasonable doubt. The

Appellant was required to prove the case beyond reasonable doubt, yet evidence put forth was not convincing enough to found a case which did not leave a doubt as to whether the Respondent was driving in a dangerous manner an act that caused the death of the deceased. This is a case where the situation that prevailed could be a question of contributory negligence which is proof on a balance of propensity which falls below the standard of proof required in a Traffic Case.

22. In the upshot, I am satisfied that the trial court did not misdirect itself in reaching the conclusion to acquit the Respondent. For that reason, the appeal lacks merit. Accordingly, it is dismissed in its entirety.

23. It is so ordered.

Dated, signed and delivered virtually this 10th day of March, 2026.

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L.N. MUTENDE

JUDGE