

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT CRIMINAL APPEAL CASE NO. E054 OF 2022

JULIUS NGUNJIRI MUGI.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGEMENT

1. The Appellant **JULIUS NGUNJIRI MUGI** has filed this appeal challenging his conviction and sentence by the learned trial Magistrate sitting at the Nyeri Magistrates Court. The office of the Director of Public Prosecutions **ODPP** opposed the appeal.
2. The Appellant had been arraigned before the Lower Court on **13th July 2020** facing the following charges:-

COUNT NO. 1

CAUSING DEATH BY DANGEROUS DRIVING CONTRARY TO SECTION 46 OF THE TRAFFIC ACT CHAPTER 403 LAWS OF KENYA.

JULIUS NGUNJIRI MUGI,

3. On the 12th July 2020 at about 0900 hrs at the Kenya police college Kiganjo junction, along Nanyuki-Karatina road within Nyeri County, being the driver of Motor Vehicle Registration Number KAE 569T Isuzu Lorry, did drive the said Vehicle in a Manner which is dangerous to the public, having regards to all the circumstances of the case, including the nature, condition and use of the road, by making a right turn without due care, and hit Motor Vehicle Registration Number KCH 041G Toyota Hiace (P.S.V MATATU), hence instantly causing the death of SARA NJOKI NJERI, who was a paying passenger in the said Vehicle.

COUNT NO. 2

CAUSING DEATH BY DANGEROUS DRIVING CONTRARY TO SECTION 46 OF THE TRAFFIC ACT CHAPTER 403 LAWS OF KENYA

JULIUS NGUNJIRI MUGI, on the 12th July 2020 at about 0900 hrs at

Kenya Police College Kiganjo junction, along Nanyuki-Karatina road within

Nyeri County, being the driver of Motor Vehicle Registration Number KAE

569T Isuzu Lorry, did drive the said Vehicle in a Manner which is dangerous

to the public, having regards to all the circumstances of the case, including

the nature, condition and use of the road, by making right turn without

due care, and hit Motor Vehicle Registration Number KCH 041G Toyota Hiace (P.S.V MATATU), hence instantly causing the death of

CICILIA NJOKI GETUKO who is a child to the deceased SARAH NYOKABI a

passenger in the said vehicle.

COUNT NO. 3

DRIVING MOTOR VEHICLE ON A PUBLIC ROAD WITHOUT DUE

CARE AND ATTENTION CONTRARY TO SECTION 49(1) OF THE

TRAFFIC ACT CAP 403 LAWS OF KENYA.

JULIUS NGUNJIRI MUGI. On the 12th July 2020 at about 0900 hrs at

the Kenya Police College Kiganjo junction, along Nanyuki-Karatina road

within Nyeri County, being the driver of Motor Vehicle Registration Number

KAE 569T Isuzu Lorry, did drive the said Vehicle without reasonable

consideration for other person using the road, by making a right turn

without due care and hit Motor Vehicle Registration Number KCH 041G

Toyota Hiace (P.S.V MATATU), hence extensively damaging it.

COUNT No. 4

DRIVING UNDER INFLUENCE OF ALCOHOL CONTRARY TO SECTION 44(1) OF THE TRAFFIC ACT CAP 403 LAWS OF KENYA

JULIUS NGUNJIRI MUGI. On the 12th July 2020 at about 0900 hrs at

Police college junction, along Nanyuki-Karatina road within Nyeri

County, being the driver of Motor Vehicle Registration Number KAE 569T

Isuzu Lorry, did drive the said Motor Vehicle while under influence of

alcohol to an extent as to be incapable of having proper control of the

said Vehicle by testing to a breathalyzer of 1.166mg/l instead of 0.35

mg/l thereby exceeding by 0.816mg/l

COUNT NO. 5

DRIVING MOTOR VEHICLE ON A PUBLIC ROAD WITHOUT DUE CARE AND ATTENTION CONTRARY TO SECTION 49(1) OF THE TRAFFIC ACT CAP 403 LAWS OF KENYA.

JULIUS NGUNJIRI MUGI. On the 12th July 2020 at about 0900hrs at the Kenya police college Kiganjo junction, along Nanyuki-Karatina road within Nyeri County, being the driver of Motor Vehicle Registration Number KAE 569T Isuzu Lorry, did drive the said Vehicle without reasonable consideration for

other person using the road, by making a right turn without due care and hit Motor Vehicle Registration Number KCH 041G Toyota Hiace (P.S.V MATATU), hence causing injury to Daniel Mwangi Wanjohi, a paying passenger in the said vehicle.

4. The Appellant entered a plea of '**Not Guilty**' to all five (5) counts. His trial commenced before the Lower Court on **29th March 2025**. The Prosecution called a total of eight (8) witnesses in support of their case.
5. **PW1 CORPORAL EMITUNDO** and **PW2 SERGEANT HASSAN WATIMA** both testified that on **22nd July 2020** at about **9.00AM** they were proceeding from Isiolo to Nairobi in an Isuzu Canter Registration **GKB 579Y** which was being driven by **PW2**. Both witnesses were seated in the front of the vehicle. They told the court that they were travelling in a convoy of vehicles.
6. When they got to the Nyeri-Chania junction, they noticed a motor vehicle Registration **KAE 569T** Isuzu Lorry Cream in colour which was two vehicles ahead of their own vehicle. The lorry abruptly turned right without stopping to give way and collided with a matatu Registration **KCH 041G** which was

coming from the opposite direction. As a result of the collision the matatu skidded off the road and landed on the extreme left. Some of the passengers in the matatu sustained serious injuries and the following two (2) victims lost their lives - Sara Njoki Njeri.

- Cecilia Njoki Getuko a child aged three (3) years old.

7. After the accident **PW2** stopped the vehicle and both he and **PW1** rushed to the matatu to assist the injured. The witnesses both state that the Appellant who was the driver of the lorry appeared drunk and tried to escape from the scene but was apprehended by members of public who proceeded to lynch him. Both **PW1** and **PW2** noticed a toddler whose body had been thrown out of the matatu, they saw a boy with a broken jaw and the mother of the dead toddler who also had serious injuries. Officers from **Kiganjo National Police College** arrived at the scene and helped to ferry the injured persons to hospital. The Appellant was later arrested and charged.

8. **PW3 DR JOYCE MAKENZIE** is a practitioner working at Nyeri - PGH. She produces the post-mortem forms in respect of the two victims who lost their lives due to the accident. **PW3** also produced a P3 form in respect of one **DANIEL WANJOHI** who was also a passenger in the matatu.
9. **PW4 PERIS CHARANA** is an officer from the motor vehicle inspection unit. She produces the inspection report in respect of the Isuzu lorry Registration **KAE 569 T PExb 4** as well as the inspection report in respect of the matatu Registration **KCH 041J PExb 5**.
10. **PW5 ISMAEL GITUKE KARIUKI** told the court that his wife and daughter lost their lives as a result of the accident. **PW5** told the court that he went to Nyeri PGH on **15th July 2020**, where he identified the bodies for purpose of post-mortem.
11. **PW6 GEORGE NDERITU WAHOME** told the Court that he was a matatu driver with **2NK SACCO**. **PW6** stated that on **12th July 2020**,

at about 9.00am he was driving the matatu Registration **KCH 041G** from Nairobi proceeding towards Nanyuki. That he was driving on the left side of the road carrying five (5) passengers. At the junction to Kiganjo Police College a lorry Registration **KAE 569T** coming from Marua side, suddenly turned into the junction without giving way. The lorry hit the matatu sweeping it off the road and into a ditch. **PW6** stated two of the passengers in his matatu lost their lives as a result of the accident.

12. **PW7 PC ARTHUR KATHURIMA** from Nyeri Traffic Base is the officer

who visited the scene. He stated that upon arrival he found a scene of carnage where two vehicles a lorry and a matatu had collided. Some of the passengers from the matatu were already dead at the scene. **PW7** took measurements and drew a rough sketch plan which he produced in court as an exhibit **PExb 6**.

13. **PW8 PC ANTHONY OPIYO** was the investigating officer. He told the

court that he too visited the scene and found the body of a child lying there. The driver of the matatu who had also sustained injuries was taken to hospital for treatment. **PW8** drew a fair sketch map which he produced in court as an exhibit **PExb 8**. **PW8** further told the court that the accused who was the driver of the lorry was subjected to a breathalyzer test. He produced the report as an exhibit **Pexb 10**.

14. Upon close of the prosecution case the appellant was found to have a case to answer and was placed on his defence. The appellant gave an unsworn defence in which he pleaded with the court to release him so that he could go and serve the nation.
15. On **6th January 2022**, **Hon. NELLY KARIUKI, PRINCIPAL MAGISTRATE** delivered her judgment in which she convicted the Appellant on Count Nos 1, 2, 3 and 4. Following his conviction the Appellant was accorded the opportunity to mitigate. Thereafter the learned trial magistrate sentenced the Appellant to a fine of **Kshs.**

100,000/= on each of the four (4) counts, in default to serve **two (2) years** imprisonment. The trial court further ordered that the sentences were to run consecutively.

16. Being aggrieved by both his conviction and sentence the Appellant filed

this appeal. The appeal was canvassed by way of written submissions. The Appellant filed the written submissions which were not dated,

Whilst the Respondent **ODPP** relied on their submissions dated **4th February 2026**.

ANALYSIS AND DETERMINATION

17. I have carefully considered the appeal before this court, the record of

the trial before the Lower Court as well as the written submissions filed by both parties.

18. This is a first appeal in which the duty of the Court is to re-examine

and re-analyse the evidence adduced before the lower court and to draw its own conclusions of the same. In the case of

OKENO -VS- REPUBLIC [1972] EA 32 the court set out the duties of the appellate court as follows:-

“An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (*Pandya v Republic* (1957) EA 336) and the appellate court’s own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion. (*Shantilal M. Ruwala v R* (1957) EA 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court’s finding and conclusions, it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate’s findings should be supported. In doing so, it should make allowance for the fact that the trial court has the advantage of hearing and seeing the witnesses, see *Peters v Sunday*

Post [1958] EA 424.” (See also Kiilu & Another v Republic [2005] KLR 174).

19. Similarly in the case of **DAVID NJUGUNA WAIRIMU -vs- REPUBLIC [2010] eKLR** the Court of Appeal stated as follows:-

“The duty of the first appellate court is to analyse 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 that 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 decisions.”

20. Firstly it was upon the prosecution to prove that an accident did in fact

occur on the material day as alleged. **PW1** and **PW2** were eye witnesses to the accident. They both testify that on **12th July 2020** at about 9.00am they were in an Isuzu Van travelling behind the lorry Registration No. **KAE 569T**. The two witnesses state that the lorry collided with a Toyota Matatu Registration No. **KCH 041G**. The witnesses both told the court that they had a clear birds eye view of the road ahead as they were both seated in the front of their van which was a raised vehicle. Moreover they state, the accident occurred at 9.00am. It was broad day light, the weather was clear and sunny thus visibility was good.

21. **PW7** and **PW8** were the police officers who visited the scene. They

too confirm having found an accident involving two vehicles Registration Nos, **KAE 569T** and a matatu **KCH 041G**. The two officers describe having found the matatu off the road with the body of a dead child and her mother lying nearby.

PW7 took measurements and drew a draft sketch plan **Pexb 7** whilst **PW8** produced in court the fair sketch plan **Pexb 8**.

22. **PW6** was the driver of the matatu registration No. **KCH 041G**. He

confirmed to the court that on **12th May 2020** he was involved in an accident at Kiganjo area with a lorry registration **KAE 569 T**. From the evidence availed before the trial court there can be no doubt that an accident did in fact occur on **12th July 2020** involving a lorry and a matatu.

23. Secondly it must be proved that the Appellant was driving one of the

vehicles involved in the accident. **PW1** and **PW2** identified the Appellant as the driver of the lorry. They both state that the Appellant attempted to flee after the accident but was cornered and apprehended by members of public. The Appellant whom the crowd attempted to lynch was taken to the nearby Kiganjo Dispensary for treatment.

24. The evidence of the witnesses identifying the Appellant was clear and

cogent. There were witnesses who were at the scene and saw the accident occur. As stated earlier the accident occurred in broad day light and visibility was good. The Appellant did not at any time deny that he was the driver of the lorry on the material day. The Appellant was apprehended at the scene immediately after the occurrence of the accident. I am satisfied that there has been a clear and positive identification of the appellant as the driver of the lorry registration **KAE 569 T**.

25. The Appellant faced two (2) counts of Causing Death by Dangerous

Driving. Therefore the prosecution was required to prove that the two victims named in Count Nos 1 and 2 of the charge sheet died as a result of the accident.

26. **PW1, PW2, PW6, PW7** and **PW8** all state that after the collision the

body of a young child aged about three (3) years old lay next to the matatu with her skull bashed in. The child's mother who had also been injured lay beside her. Both were

passengers in the matatu. The witnesses also saw a man with a broken jaw. The victims were all rushed to hospital.

27. **PW5** Ismael Kariuki told the court that the dead woman and child were

his wife and child. **PW5** told the court that on **15th July 2020** he went to the mortuary at Nyeri-PGH where he saw and identified the two bodies to the doctor who performed the autopsies.

28. **PW3 DR MACKENZIE** was a doctor who produced the post-mortem

reports in respect of the two victims. The report in respect of **Sarah Nyokabi Njeri (Pexb 2)** indicated that the Deceased who was an adult woman died as a result of multiple injuries due to blunt force trauma consistent with a road traffic accident. **PW3** also produced the post mortem report in respect of the child **Cecilia Njoki - (Pexb 1)**. The report indicates that the cause of death was open fracture of the skull as the result of blunt force trauma arising from a road traffic accident.

29. This is expert medical evidence which was not controverted at all by

the Appellant. I therefore find that the two victims met their untimely and unfortunate deaths as a result of the accident which occurred on **12th July 2020.**

30. Finally the prosecution were required to prove that it was the Appellant

who by his dangerous and/or reckless manner of driving caused the accident to occur.

31. **PW6** who was the driver of the matatu told the court that he was

driving on the left side of the road heading towards Nanyuki. That the lorry being driven by the Appellant was being driven from Chaka direction. **PW6** states that at the Kiganjo junction the lorry just drove into the junction without stopping to give way and hit the oncoming matatu. As a result of the collision the matatu was pushed off the road and into a ditch.

32. The evidence of **PW6** regarding how the accident occurred was

corroborated by the two eye witnesses. **PW1** and **PW2**.

The

witnesses confirm that as the lorry approached the Kiganjo junction,

it failed to slow down and/or give way. **PW2** in his evidence stated that

“The lorry turned right at the junction with no warning to enter the road towards Nyeri town at the junction.....”

33. I have carefully perused the sketch plan produced by the investigating

officer. That sketch plan clearly shows that the point of impact indicated by debris of broken glass was in the junction. The lorry driver who was coming from Marua direction was required to stop at that junction and give way before proceeding. A careful driver would only have turned into the junction upon ascertaining that there was no oncoming vehicle and that the road was clear. The Appellant did not do this. He carelessly and negligently drove into the junction directly into the path of the oncoming matatu. The

force of the impact is clear from the fact that the matatu was pushed off the road into a ditch on the left side. It was this negligent action by the Appellant which caused the accident which led to the death of the two unfortunate victims.

34. **PW8** who investigated the accident told the court that he blamed the

Appellant for causing the collision by driving dangerously.

35. The Appellant gave an unsworn defence in which he made no

reference at all to the accident. He did not deny the allegation that

he was to blame for the accident. The evidence of the prosecution witnesses was clear and consistent. They all remained unshaken under cross-examination. None of these witnesses knew the Appellant before and none had any reason to lie against him. I accept their evidence as a factual and truthful account of what transpired on that day.

36. From the evidence on record I find that it was the accused who caused

the accident due to his dangerous driving. In the circumstance I am satisfied that the conviction of the Appellant on Count Nos 1 and 2 was sound and I do confirm those convictions.

37. The Appellant faced a third Count of driving without due care and

attention thereby causing extensive damage to the matatu Registration **KCH 041G**. It has already been established that the Appellant drove dangerously thereby causing the accident in question. **PW4** an officer from the Motor Vehicle Inspection Unit did produce in court the inspection report in respect of the matatu. The report indicated the damages caused to the matatu as a result of the accident Serial No. **036819 Pexh 5**. Once again this was expert evidence which was not controverted at all by the Appellant. As such I am satisfied that

Count No. 3 was proved and I do confirm the conviction of the Appellant on that charge.

38. The Appellant faced a fourth charge of driving under the influence of

alcohol. **PW1** and **PW2** both stated that the Appellant appeared drunk when he came out of his vehicle after the accident. **PW8** the investigating officer told the court that he subjected the Appellant to a breathalyzer test. He produced the report dated **12th July 2020** as an exhibit **Pexb 10** which report indicated that the alcohol in the blood of the appellant was at level **1166mg/litre** against the legal limit of **0.35 mg/litre**. Thus the alcohol in the blood level of the appellant had exceeded the legal limit by **0.816 mg/litre**. Clearly the Appellant was driving under the influence. Indeed this is probably the reason why his driving was impaired leading to the accident. Once again the prosecution availed scientific evidence to prove this charge. The Appellant did not challenge or controvert that evidence. As such I am satisfied that Count No. 4 was proved to the standard required in law and I do confirm the conviction of the Appellant on that count.

39. Regarding **Count No. 5** the prosecution sought to rely on the written

statement of one **Daniel Mwangi Wanjohi** who allegedly sustained injuries due to the accident. It was said that this witness later turned hostile and despite several summons failed/declined to come to court to testify.

40. The learned trial magistrate did in my view correctly analyse the

admissibility of this statement vis-a-vis the provisions of **Section 33 of the Evidence Act, Cap 80 Laws of Kenya.**

The magistrate found that the statement of a witness who for whatever reason has declined to attend court is not admissible. Thus I confirm the acquittal of the appellant on Count No. 5.

41. Following his conviction the appellant was allowed an opportunity to

mitigate. The trial court then sentenced him to pay a fine of **Kshs. 100,000/=** on each of the four (4) counts in default to serve **two (2) years** imprisonment. The court directed that the sentences be served consecutively.

42. **Section 46** of the Traffic Act provides for a maximum sentence of

ten (10) years upon conviction. This was a case where two innocent lives were lost and several people were injured because the appellant chose to get behind the wheel of a large vehicle a lorry whilst intoxicated. In my view a stiff sentence was called for to act as a deterrent to other like-minded persons. The sentences imposed were lawful and in my view were appropriate and I uphold the same.

43. Finally I find no merit in this appeal. The same is dismissed in its entirety. The conviction of the Appellant in Count Nos 1, 2, 3 and 4 are confirmed and the sentences are upheld.

Dated in Nyeri this 17th day of April, 2026

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MAUREEN A. ODERO
JUDGE