



REPUBLIC OF KENYA



KENYA LAW
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**Richu v Republic (Criminal Appeal E035 of 2021)
[2025] KEHC 5590 (KLR) (Crim) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5590 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CRIMINAL

CRIMINAL APPEAL E035 OF 2021

AB MWAMUYE, J

APRIL 30, 2025

BETWEEN

JOHN KAMAU RICHU APPELLANT

AND

REPUBLIC RESPONDENT

*((Being an Appeal from the original conviction and sentence by
Hon. N.M Nyaga in Makadara Traffic Case No. 3376 of 2011))*

JUDGMENT

1. The Appellant, John Kamau Richu, was charged with the offence of causing death by dangerous driving contrary to Section 46 of the [Traffic Act](#) Cap 403 Laws of Kenya. He was equally charged with failing to stop after an accident contrary to Section 73 (3) of the [Traffic Act](#), and also failing to report an accident contrary to Section 73 (4) of the [Traffic Act](#) Cap 403 Laws of Kenya. The Appellant was convicted and sentenced to a term of imprisonment of 18 months for the first count and a month each for the second and third counts.
2. Being aggrieved with both the conviction and sentence, the Appellant filed a Petition of Appeal dated 8th April 2021 that espoused the following grounds of appeal, verbatim:
 - “ a. That the learned magistrate erred in law and fact by failing to appreciate Articles 25(c) and 50(1), (2) (c), (e), (k) of [the Constitution](#) hence infringing the Appellant right to fair trial.
 - b. That the learned magistrate erred in law and facts when he failed to appreciate that the evidence adduced in court was manifestly contradictory, inconsistent



and glaring gaps revealed uncertainty and failing to give due consideration to the Appellant.

- c. That the learned magistrate erred in law and fact in convicting and sentencing the Appellant by relying on evidence not on the record as per the witness's account.
 - d. That the learned magistrate erred in law and fact to convict the Appellant without considering that the prosecution's evidence adduced was not proved beyond reasonable doubt hence unsafe to warrant a conviction, contrary to Section 109 and 110 of the *Evidence Act*.
 - e. That the learned magistrate misdirected himself in fact and law by not appreciating and interrogating the evidence of the prosecution witnesses PW2, Saidi Thuita who clearly indicated that the deceased was drunk and standing on the road when the accident happened.
 - f. That the learned magistrate misdirected himself in fact and law by not attaching requisite weight on the Appellant testimony who testified and denied over being the driver of the motor vehicle during the alleged accident and more particularly told the court that the vehicle he usually drove was packed the whole day.
 - g. That the learned magistrate erred in law and fact in convicting and sentencing the Appellant yet evidence relied on to convict and sentence the Appellant was based on hearsay evidence.
 - h. That the trial magistrate erred in fact and in law by failing to comply with section 169 of the *Criminal Procedure Code* in writing the Judgment herein."
3. The Appellant filed written submissions dated 16th June 2021 to which he submitted that he was not accorded adequate time to prepare a defence or call his witnesses; thus, the Trial Court violated his right to fair trial. He further stated that his right to fair trial was infringed upon due to delay by the Trial Court which took 9 years to conclude his case. He proceeded to state that the prosecution did not prove its case beyond reasonable doubt as required by the law, since no evidence was adduced during trial that points to the Appellant as the driver of the motor vehicle in question.
 4. In addition, the Appellant stated that there were several contradictions and inconsistencies in the testimonies of the witnesses during trial that were not considered by the Trial Court. The Appellant further stated that there exists no valid judgment in the present case since the Judgment was not dated and is incapable of being cured by any Section in the *Criminal Procedure Code*.
 5. The Respondent filed written submissions dated 25th July, 2022 to which they stated that the Appellant was granted adequate time to prepare for his defence and call witnesses once he was placed on his defence and ought to have prepared adequately. The Respondent further submitted that it proved its case beyond reasonable doubt by tabling all evidence that covered all the elements the offences.
 6. Upon consideration of the facts of the case, the grounds of appeal and the submissions made by parties, there is only one issue permanent for consideration:
 - i. Whether the prosecution proved its case beyond reasonable doubt.
 - ii. Whether the prosecution proved its case beyond reasonable doubt



Analysis and Determination.

7. I have carefully considered and reviewed the evidence on record. I understand the complaint of the Appellant to be that the witnesses gave contradictory evidence as to the registration number of the motor vehicle that caused the accident. The charge sheet identified the vehicle as registration number KAY 289F, whereas PW3 testified that the motor vehicle that caused the accident was registration number KAY 982F and PW6 indicated the registration number of the motor vehicle as KAY 289E.
8. The Appellant stated that there being glaring contradictions as to the registration number of the motor vehicle, the Trial Court erred in convicting him based on circumstantial evidence. He further stated that the hearsay evidence of the witness who was a motor cycle (boda boda) rider that allegedly followed the motor vehicle that caused the accident was used as a ground for his conviction yet the witness was never availed by the Prosecution to testify during hearing.
9. He further stated that the implication is that in the absence of an eyewitness to testify to having seen the Appellant driving the motor vehicle at the moment of impact, and in light of the fact that the State did not call the motor cycle rider who followed the motor vehicle after the accident to ascertain the registration number of the motor vehicle that caused the accident, there was no basis upon which the Trial Court could find a prima facie case and thus put the Appellant on his defence.
10. There is no scarcity of jurisprudence on what constitutes a prima facie case. A Trial Court, at the stage of the close of the prosecution case, must determine whether a prima facie case has been established by the evidence adduced to justify the accused to be put on his defence.
11. The Court defined a prima facie case in the case of Republic v Abdi Ibrahim Owi [2013]eKLR as follows:

“‘prima facie’ is a Latin word defined by Black’s Law Dictionary 8th Edition as, “sufficient to establish a fact or raise presumption unless disapproved or rebutted”. ‘Prima facie’ is defined by the same dictionary as “the establishment of a legally required rebuttable presumption.” To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with. In Ramanlal Trambaklall Bhatt v. R [1957] E.A 332 at 334 and 335, the court stated as follows:

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one “which on full consideration might possibly be thought sufficient to sustain a conviction.” This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is “some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence”. A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence...It may not be easy to define what is meant by a “prima facie case”, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”



12. Similarly, in the case of *Ronald Nyaga Kiura v Republic* [2018] eKLR the Court held:
- “It is important to note that at the close of the Prosecution, what is required in law at this stage is for the Trial Court to satisfy itself that a prima facie case has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the *Criminal Procedure Code*...”
13. Sections 107-109 of the *Evidence Act* (Cap 80 of the Laws of Kenya) are clear that the burden of proof lies on the Prosecution throughout the trial to lead evidence that points to the guilt of the accused person beyond reasonable doubt unless there is statutory provision that shift that burden to the accused, or unless the accused has admitted, unequivocally, that he committed the offence for which he is charged.
14. In the case of *Republic v Silas Magongo Onzere alias Fredrick Namema* [2017] eKLR the court stated:
- “...as to what constitutes the burden of proof beyond reasonable doubt the case of *Miller v Minister of Pensions* [1947] 2ALL ER 372 -373 provides as follows in a passage alluded to me considered the greatest jurist of our time Lord Denning:
- “That degree is well settled. It needs not reach certainly, but it must carry a high degree of probability. Proof beyond a reasonable doubt does not mean proof beyond a shadow of a doubt. The law would prevail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility of his favour which can be dismissed with the sentence of course it is doubt but nothing short of that will suffice.”
15. At the outset, the starting point is to set out the elements that constitute the offence of causing death by dangerous driving. To justify a conviction for the offence, the prosecution must prove to the required legal standard that the accident in question was caused by a situation which, viewed objectively, was dangerous and was caused by the fault of the accused person in the manner which he/ she drove the subject motor vehicle.
16. The fault required to be established against a driver facing the offence of causing death by dangerous driving was defined by the Court of Appeal in *Timothy Orwenyo Missiani v Republic* [1979] eKLR in the following terms:
- “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...”
17. Proof of occurrence of an accident in which a person died is itself not sufficient to establish the offence of causing death by dangerous driving. The prosecution must in addition prove that the accident was caused by the accused person’s dangerous driving and in determining the accused person’s culpability, the court must consider all the surrounding occurrence including the nature, use and condition of the road.



18. In the case of *Ngure v Republic* [2003] EA the Court of Appeal had the following to say:

“The mere occurrence of an accident alone is not enough to prove a charge of causing death by dangerous driving under Section 46 of the *Traffic Act*. Evidence must also disclose a dangerous situation and the driver must be shown to be guilty of the departure from the normal standard of driving which would be expected of a reasonably prudent driver.”
19. The Court of Appeal also went ahead to re-state the standard of proof and the test, as was laid down in *Kitsao v Republic* MSA H.C.Cr.A.75 of 1975 (unreported) that to justify a conviction of the offence causing death by dangerous driving there must not only be a situation which, viewed objectively, was dangerous, but there must also be some fault on the part of the driver causing the situation, but whether the appellant also played a part in causing the situation to be dangerous.
20. As evident from the record at trial, that the Trial Court relied upon circumstantial evidence to reach its verdict. The law on the kind of circumstantial evidence to support a conviction is that it must point to no other hypothesis than that of the guilt of the accused. That remains the judicially established threshold as stated by the Court of Appeal in the case of *PON v Republic* [2019] eKLR where the court held as follows:

“To base a conviction entirely or substantially upon circumstantial evidence, it is necessary that guilt of the suspect should not only be rational inference but also it should be the only rational inference that could be drawn from the circumstances. If there is any reasonable possibility consistent with innocence, it is the duty of the court to find the suspect not guilty.”
21. It is trite that a court can draw an inference of guilt of an accused person from circumstantial evidence so long as the inculpatory facts lead irresistibly to that conclusion, are incompatible with the innocence of the accused and there are no co-existing factors that can weaken the inference of guilt. See: *John Chebichii Sawe v Republic* [2003] eKLR
22. In my view, the Prosecution failed to prove the case against the Appellant beyond reasonable doubt as required by law. The evidence given by prosecution witnesses was insufficient to sustain a conviction as the same did not support or prove the charges against the Appellant based on several inconsistencies. There is no evidence pointing directly to the guilt of the Appellant and a lot of doubt has been cast upon the allegations made against the Appellant.
23. It was erroneous for the Trial Court to fail to appreciate the principles on how to treat circumstantial evidence and it consequently invites interference by this court. It was obligatory upon the prosecution to prove the speed at which the vehicle was driven and demonstrate the same to have been dangerous in the circumstances. In my assessment by close of the prosecution’s case, there was contradicting evidence of the motor vehicle that caused the accident. I am satisfied that a prima facie case was not established against the accused person to warrant him to be placed on his defence.
24. In this case, I find that the learned trial magistrate erred in considering circumstantial evidence and finding that the prosecution proved its case beyond a reasonable doubt. I agree with the submissions by the Appellant that the Trial Court did not take into consideration that three witnesses testified to the motor vehicle that caused the accident having three different registration numbers that is KAY 2X9F, KAY 9X2F and KAY 2X9E. I therefore find that reasonable doubt was created and whose presence militated against any conviction.



25. In her judgment, the Learned Magistrate after analyzing the evidence tendered by both prosecution and defence stated as follows;
- “...it is on record that the vehicle’s registration number, KAY 289F, was obtained by boda boda riders who ran after it. PW3 also confirmed that he wrote the truck’s registration number at the time it slowed down before speeding away after the accident. According to PW6, the lorry was impounded at a garage and taken to the station...”
26. It is however prudent to note that during his testimony PW3 testified that he never knew nor saw the lorry driver. Further, PW3 testified that the registration number for the lorry that caused the accident was KAY 9X2F and not KAY 2X9F since he indicated in his evidence that he wrote the number there and then before the driver took off.
27. Without a positive identification of the Appellant as the driver of the lorry, the Trial Court erred in placing the Appellant on his defence; and further convicting him of the offences charged.
28. Accordingly, I do find that with the doubt left by the prosecution’s case and built upon by the defense case, the conviction was unsafe and I do quash it.
29. However, I note that according to my computation the Appellant seems to have already served his sentence in full being the imprisonment term of 18 months for the first count and a month each for the second and third counts issued by the lower court. If that is not the case, the Appellant be and is hereby set free forthwith.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF APRIL 2025.

BAHATI MWAMUYE

JUDGE

