REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL APPEAL NO 240 OF 1988

BETWEEN

PHILIP..... APPELLANT

AND

REPUBLIC.....RESPONDENT

JUDGMENT

(Appeal from conviction and sentence of the Resident Magistrate's Court at Thika, JBN Muturi Esq)

October 21, 1988, Mbito Ag J, Shah CA delivered the following Judgment of the Court.

The Appellant who was convicted of four offences, viz, (1) causing death by dangerous driving contrary to section 46 of the Traffic Act (Cap. 403), (2) Failing to report an accident contrary to Section 73 of the Traffic Act, (3) Using unlicenced motor vehicle contrary to section 15 of the said Act and (4) Failing to renew driving licence contrary to section 30(4) of the said Act has appealed to this court against both conviction and sentence in as far as it relates to causing death by dangerous driving is concerned.

During the course of the hearing before us the appellant argued that he had pleaded not guilty to count 1 and that he had pleaded guilty to count II, III and IV. He stated that the Prosecution had not stated any facts to the lower court. He is challenging the validity of the record which is before us.

We have carefully perused the record. There is nothing on record to show that he had pleaded 'not guilty' to count 1. The appellant went to the extent of stating that the facts recorded by the trial magistrate on pages 4 and 5 of the record were not stated to the court. This we find difficult to believe. The trial magistrate has carefully noted the full circumstances in relation to the accident and what happened after the accident. We are not prepared to accept that all this was made up.

We feel that the appellant is not acting bona fide in saying all this. We accept the reasons of the lower court as correct. Looking at it once again it becomes clear that the trial magistrate followed the correct procedure for recording a plea of guilty in that he found the appellant guilty after recording all facts stated and after the appellant accepted the correctness of those facts.

The facts of the accident as admitted by the appellant show dangerous driving or reckless driving. We

therefore dismiss the appeal against conviction on Count 1.

We turn now to the appeal against sentence. We do not for one manner underrate the damage caused by the carnage on our roads, reported daily in our newspapers. But we must deal with each case on its own peculiar facts. The facts here are that the accused is a young man of 26 years.

This was his first offence. Mr. Mugo who appeared for the respondent stated that although the sentence may be termed a robust one it is not one which is so manifestly excessive as to warrant interference by this court.

The principles of sentencing in cases of this nature were set out by our Court of Appeal in the case of *Onweyo Misiani Vs The Republic* (1979) K.L.R. Page 285. Law Miller and Porter JJA then confirmed the correctness of the principles set out by Madan and Chesoni JJ (as they then were) in the case of *Govind Shamji Vs The Republic* (unreported) and we quote:

“The offence of causing death by dangerous driving is not an ordinary type of crime. While it cannot be given an accord of protection by putting it in a glass cage of its own, the people who commit this offence do not have a propensity for it, neither it is a type of offence committed for gain, revenge or lust or to emulate other criminals. In a case of causing death by dangerous driving, a custodial sentence does not necessarily serve the interests of the public. There are of course cases before a custodial sentence is merited, for example, when there is a compelling feature such as element of intoxication or recklessness”.

We are not unmindful of the fact that since the date of that judgment the maximum sentence for such an offence has been increased from 5 years to 10 years. This was obviously done by our parliament to enable the driving public to realize the seriousness of the offence, more so during the present period when road deaths are on the increase.

Mr. Mugo said that the remarks made by the Court of Appeal were pertinent before the amendment came into effect. Perhaps it may be so but we doubt if the principles have really changed. It still remains and must be a fact that these offences are not committed for gain but on revenge etc.

We have however kept in mind the seriousness of the offence. We think that the interests of justice and interest of the public will be properly served if the appellant’s custodial sentence was reduced to the extent that whatever period he has now served (it amounts to one year or so with remission) would be sufficient. The appellant must of course be kept off the roads for three years.

We therefore allow the appeal against sentence on all four counts to the extent that the sentence imposed is hereby reduced so that the appellant may be released from custody forthwith unless if he is otherwise lawfully held. The order for disqualification from holding or obtaining a driving licence for a period of three years after the end of prison term (that is from now) as the sentence is reduced will remain and the endorsement on the appellant’s driving licence may appropriately be amended.

Dated and delivered at Nairobi this 21st day of October , 1988

MBITO **SHAH CA**

AG JUDGE **JUDGE**

I certify that this is a true copy of the original.

DEPUTY REGISTRAR