



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CRIMINAL APPEAL CASE NO. 186 OF 2008**

**EDWIN MATHENGE MACHANJAMI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Appeal from the original conviction and sentence by R. A. A. Otieno, Senior Resident Magistrate, in the Nyeri Chief Magistrate's Traffic Case No.1192 of 2007 delivered on 15<sup>th</sup> July 2008)*

**JUDGMENT**

The appellant herein, was tried on a charge of careless driving contrary to Section 49 (1) of the Traffic Act. At the end of the trial, he was convicted and sentenced to pay a fine of Ksh.5,000/=. The Appellant was dissatisfied, hence this appeal. On appeal, the Appellant put forward the following grounds in his petition:

1. ***That the learned trial magistrate erred in law and in fact in convicting the accused without any medical proof of collision with the alleged victim of the accident.***
2. ***That the learned trial magistrate erred in law and in fact in convicting the accused against the weight of the evidence.***
3. ***That the learned trial magistrate erred in law and in fact in convicting the accused on contradicting evidence.***

When the appeal came up for hearing, Mr. Karweru, learned Advocate for the Appellant argued one main ground, that is to say that there was no medical evidence to show that a pedestrian was injured nor a collision occurred between the motor vehicle and the complainant. Mr. Makura, learned Senior State counsel conceded the appeal on the ground that the prosecution had failed to tender the medical report nor motor inspection report. Mr. Makura went ahead to state that the prosecution had failed to issue the notice of intention to prosecute as required by law.

Before considering the substance of the appeal, let me set out in brief the case that was before the trial court. Three witnesses testified in support of the prosecution's case. Veronicah Mbula Mutinda (P.W.1) was the first to testify. P.W. 1 told the trial court that on 22<sup>nd</sup> July 2007 she together with her friend Christabel Waiyua Mainya (P.W. 2) walked from Kagumo Teacher's College towards Gatitu on the left side of the pedestrian path. Shortly P.W. 1 heard her friend scream to indicate there was danger. P.W. 1 said she attempted to jump but it was too late, hence she was hit by a motor vehicle which was heading towards Gatito. P.W. 1 said she fell down and was injured on her left arm. She later learnt that the driver of motor vehicle which had hit her took her for treatment at Nyeri Provincial General

Hospital. P.W. 1 was hit from behind hence she did not see the motor vehicle approach her. In the hospital, it is said P.W.1's arm was found to have gotten fractured. The same was bandaged and placed on a sling. P.W. 1 identified the Appellant as the one who drove the motor vehicle which hit her and thereafter took her to hospital for treatment. A P3 form was filled at Machakos where the Complainant (P.W.1), was transferred from Nyeri Provincial General Hospital for further treatment. Christabel Waiyua Mainya (P.W.2) corroborated the evidence of P.W. 1. P.W. 2 said as was walking with P.W. 1 from Kagumo Teachers Training college towards Gatitu, she heard the sound of a racing motor vehicle behind them. When she looked back she saw a motor vehicle which was about to hit them. She screamed and jumped to avoid being hit. P.W. 2's friend i.e. P.W. 1 was unlucky since she was hit by that motor vehicle. P.W. 2 said she saw the driver of the motor vehicle which had hit P.W. 1 rush to where P.W. 2 was. P.W. 2 identified the motor vehicle as KAY 795T. The aforesaid motor vehicle was used to transport P.W. 1 and P.W. 2 to hospital for treatment at Nyeri Provincial General Hospital. P.W. 1 and P.W. 2 confirmed that they walked on the pedestrian path which was off the road. P.C. James Miano, (P. W. 3) said he received a report of the accident on the same date it occurred. P.W. 3 said that P.W. 1 and P.W. 2 visited Nyeri Police Station where he entered the report of the accident in the Occurrence Book. P.W.3 confirmed that P.W. 1 was injured on the left arm. P.W. 3 said he visited the scene of the accident in company of the driver of motor vehicle registration No. KAY 795T. P.W. 3 observed the scene and the motor vehicle. He noticed a slight dent and a broken light indicator on the motor vehicle. P.W. 3 drew the sketch map which he produced in evidence as an exhibit. P.W. 3 stated that the motor vehicle was detained and later released after it was inspected. The recorded evidence shows that the prosecution had applied for adjournment to enable them tender the evidence of the doctor who treated the complainant and that of the motor vehicle examiner. That application was refused thus locking out the evidence of those crucial witnesses.

When the Appellant was placed on his defence, he gave unsworn statement. He therefore denied the prosecution a chance to cross-examine him. The Appellant simply denied the offence. He claimed that on that date he drove along the same road and stopped when two motor vehicles which were ahead of him stopped. He claimed he moved on when those motor vehicles moved on too.

The learned trial Senior Resident Magistrate considered the evidence from both sides. She came to the conclusion that motor vehicle registration No. KAY 795T was placed at the scene as the vehicle which hit the complainant. She formed the opinion that the Complainant was consistent.

I have reconsidered the evidence on record vis-à-vis the Appellant's powerful submissions. According to the appellant, the failure by the prosecution to tender the evidence of the medical report and that of the motor vehicle examiner meant that the case was not proved beyond reasonable doubt. I have critically looked at the evidence of P.W. 1 and P.W. 2 and found their testimonies to be consistent. Christabel Waiyua Mainya (P.W.2) was categorical that she saw motor vehicle Registration No. KAY 795T drive off the road before hitting P.W. 1. She also saw the Appellant stop and come out of that motor vehicle to take them to Nyeri Provincial General Hospital for treatment. In fact the Appellant admitted in his defence that he drove along the aforesaid road on the same date. The other crucial evidence which was tendered in support of the prosecution's case was that of P.W. 3, a traffic officer who visited the scene of accident in company of the Appellant. I have re-examined the sketch map P.W. 3 prepared and produced in evidence. The sketch map indicates that the motor vehicle veered off the road thus hitting P.W. 1 two (2) metres away from the main road on the left pedestrian walk path. With these sort of evidence, it is clear that the offence of careless driving was proved to the required standard. There is no reason to discredit the evidence of P.W. 3 which was to the effect that motor vehicle registration No. KAY 795T had a dent and that its left light indicators were broken. It is obvious that the evidence of P.W. 3 is uncontroverted in many respects. First, there is no denial that the Appellant drove the same motor vehicle to the Police Station where it was detained and only released after examination. Secondly, that the Appellant accompanied P.W. 3 to the scene of accident. Thirdly, that P.W. 3 checked and found that the motor vehicle had a dent and that one of its light indicators was broken. Fourthly, that the motor vehicle went off the road to the left side was it hit the complainant. Fifthly, that the Appellant actually drove the motor vehicle along the same road. In my view, I think the evidence tendered taken as a whole, the ingredients of the offence the Appellant was convicted for were proved to the required standards despite the fact that no medical nor motor vehicle

examiners reports were produced. I am convinced Mr. Makura improperly conceded the appeal.

In the end and for the above reasons, the appeal is dismissed in its entirety.

*Dated and delivered at Nyeri this 8<sup>th</sup> day of July 2011.*

**J. K. SERGON**  
**JUDGE**

In open court in the presence of Ngalyuka learned Senior State Counsel and no appearance on the Appellant's part.