

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO.404 OF 2000

**From original conviction and sentence in Criminal
Case No.2650/99 of the Chief Magistrate's Court
at NAKURU – H. WASILWA (S.R.M.)**

JOHN MARIC KULET.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant was charged with FAILING TO STOP AFTER AN ACCIDENT contrary to Section 73(3) of the Traffic Act. The particulars of the charge were:-

“JOHN MARK KAMAKEY KULET on the 14th day of March, 1999 at about 6.10 p.m. along S.K. BEDI road near P.C.E.A. Church within Nakuru Township in Nakuru District of the Rift Valley Province being the driver of a motor vehicle Reg. No.KLX 295 Land Rover and having been involved in an Accident with a pedestrian who sustained Injuries did fail to report such accident to A police station or to a police officer Within 24 hours after such accident.”

The appellant pleaded not guilty to the charge and the case was fully heard. The trial court found him guilty of the offence and sentenced him to a fine of shs.4000/- and in default 3 months imprisonment. He has now appealed against both conviction and sentence. The appeal is opposed.

The Appellant's advocate argued this appeal. He raised 4 grounds. The first ground was that the trial magistrate erred in finding there was an accident on the material day. Ground two was that the trial court erred for finding that the Complainant was injured without any evidence of injury. The third ground was that the court erred in failing to find that the prosecution's evidence was contradictory. The last ground argued was that the trial court imposed an illegal sentence not provided under Section 75 of the Traffic Act.

The appeal was opposed on the conviction but the Learned State Counsel conceded the appeal against the sentence. The State Counsel submitted that the evidence adduced by the prosecution was sufficient to sustain the charge.

I have considered this appeal. The very first point I have noted is that the statement of the offence is not supported in the particulars of the charge. The charge against the Appellant was that he failed to stop after an accident. The particulars of the charge do not allege that he failed to stop. They allege that he failed to report an accident. None of the parties to this case seem to have noted this serious anomaly and neither did the court. It was the duty of the prosecution to ensure that the charge and the particulars of the same tally. It was also the duty of the court to ensure that there was a proper charge before it. If the charge was not proper the court had a duty and powers under Section 214(1) of the Criminal Procedure

Code to order for an amendment of the charge. Section 214(1) of the Criminal Procedure Code provides:-

“Where at any stage of a trial before the close of the case for the prosecution, it appears to the court that the charge is defective either in substance or in form, the court may make such order for the alteration of the charge, either by way of amendment of the charge or by the substitution or addition of a new charge, as the court thinks necessary to meet the circumstances of the case.”

The charge before the court was defective and the defect goes to the substance of the charge making it fatal to the prosecution case. No wonder confusion was caused to both the parties to this case as to the real charge facing the Appellant. Given the defect no evidence could be adduced to support it and the conviction was erroneous.

I must however state that after perusing the evidence on record, I have no doubt whatsoever that an accident occurred on the material day between the vehicle the appellant was driving and the Complainant. In this case, the conviction cannot however stand. I accordingly allow the appeal by quashing the conviction and setting aside the sentence.

I further order that if any fine was paid by the Appellant it should be refunded to him.

Orders accordingly.

Dated and delivered at Nakuru this 16th day of May, 2003.

JESSIE LESIIT

JUDGE