



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO.216 OF 2001

(From original conviction and sentence in Criminal
Case No.1267/2000 of the Principal Magistrate's
Court at NYAHURURU – G.J.C.OMBITO(RM))

PIUS MWANGI NDERI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant PIUS MWANGI NDERI was charged with the offence of OBSTRUCTION contrary to Section 50(1) of the Traffic

Act. The particulars of the charge read that:-

“PIUS MWANGI NDERI on the 1 st day of September, 2000 at 1 am along Ol Kalou/Nyahururu Road, within Nyandarua District of the Central Province being the driver of a motor vehicle Reg. No.KAA 606X Isuzu Canter drove the said motor vehicle on the said road causing obstruction by stopping in the middle of the road.”

He has appealed against conviction. His advocate argued three grounds two of them together. The court's attention was drawn to the defect on the charge where the appellant's vehicle was described as Reg. No.KAA 606Z while the evidence adduced showed it was in fact KAC 606Z. The other ground argued is that the court did find that the Appellant had put twigs, branches and the triangular size saver and therefore should have found that the Appellant had complied with the requirements of Section 53(1) of the Traffic Act.

The appeal was not opposed.

The Learned State Counsel did not support the conviction both on grounds of defect in the description of the Appellant's vehicle and on ground of inconsistency in the prosecution case which rendered it unsafe to convict.

I did consider the appeal, submissions raised by both Counsels and did scan the trial court's record. I do agree that the particulars of the charge were defective. Not just because of the lack of evidence to support description of the appellant's vehicle but also for ambiguity.

The charge alleges two acts by the Appellant:-

1. That he drove his vehicle
2. That he obstructed the road.

Those were two different charges for which no evidence should have been adduced for being fatally defective. Even without going into the other details of this appeal, I do find that the conviction in this case was unsafe and cannot be sustained. This appeal is allowed.

Accordingly the conviction is quashed and the sentence set aside.

JESSIE LESIIT

JUDGE

Read, signed and delivered this 16th day of July, 2003.

In presence of

Mr. Njagi Nderitu for Appellant

Mr. Mutuku for Respondent.

JESSIE LESIIT

JUDGE