

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT CRIMINAL APPEAL NO. 35 OF 2002

(ORG. S.P.M. MURANGA TR.C.102/01)

PAUL KARANJA NYORO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant was charged with the offence of careless driving contrary to Section 49(1) of the Traffic Act, Cap. 403 Laws of Kenya, it being alleged that he drove motor vehicle registration number KYZ 527 Toyota Pick-Up matatu along Muranga-Kiriaini road on 6th January, 2001 without due care and attention.

The motor vehicle was hit at the rear and by an oncoming motor vehicle registration number KAM 833 of a Nissan Matatu being driven by P.W.1 Timothy Konji Gichuki. Both motor vehicles were going towards Muranga Town at about 7.00 a.m. carrying passengers.

Although part of prosecution evidence particularly from P.W.3, P.W.4, P.W.1 is to the effect that the Appellant's motor vehicle was reversing with three passengers hanging from the tail of the motor vehicle which swerved to the right side thereby causing obstruction to the motor vehicle driven by P.W.1 and as a result collision between the two vehicles occurred causing P.W.1 to lose control of his motor vehicle which therefore landed in a ditch on the right side of the road, careful consideration of the evidence before the learned trial magistrate is that P.W.1 saw the Appellant's more than 100 metres. The prosecution kept on trying to shorten that distance, P.W.8 coming out with 50 metres. But it remains apparent that P.W.1 had a good distance seeing the Appellant's motor vehicle in front after negotiating a bend on a stretch said to have had some potholes which do not seem to have bothered P.W.1.

The Appellant's motor vehicle was not actually reversing and had no passengers hanging from the tail as claimed by P.W.1. The Appellant's motor vehicle had stalled meaning the engine was not, at that time, running. That vehicle could not therefore have been reversing. If moving therefore, it could only have been pushed to get moving.

But although the Appellant was requesting his passengers to get out and push his motor vehicle outside the road on the side of the road where it could safely remain while he looked for petrol which he suspected had got finished thereby causing his motor vehicle to stall, nobody had by that time, got out to push the motor vehicle. It was therefore still in the road and the evidence of P.W.8, the Traffic Police Officer who visited the scene is that the Appellant's motor vehicle was still on its lanes. The extent of the damages P.W.5, the Motor Vehicle Inspector, brought out in respect of each motor vehicle does not tally with the evidence of other prosecution witnesses that the Appellant's vehicle was hit or damaged on the back right side while P.W.1's vehicle was hit or damaged on the front left side. According to P.W.5, damages on the whole width of the rear part of the Appellant's vehicle as well as the whole width of the front side of P.W.1. Where is the overtaking of a vehicle reversing from the left lane to the right lane when damaged parts are as spread as brought out by P.W.5?

But even if the Appellant's motor vehicle was moving from the left side lane to the right side lane, either being pushed or reversing, the time was day light. The road was clear and P.W.1 could see the

Appellant's motor vehicle from a distance as far as 100 metres. Even reducing that distance to 50 metres. There is no evidence that other motor vehicles or obstructions were at that time within that distance of 100 metres or 50 metres. Unless it was P.W.1 who was driving carelessly contrary to Section 49(1) of the Traffic Act, I do not see why P.W.1's motor vehicle should have hit the Appellant's motor vehicle even if the Appellant's vehicle had three persons hanging at its rear. P.W.1 should have braked and gone slowly to avoid the accident.

I get the impression the defence case was more truthful than the prosecution's case and from the evidence before the court, I do not think the prosecution proved its case against the Appellant beyond reasonable doubt.

In the circumstances, this appeal is allowed. The conviction quashed and the sentence thereon set aside. I understand the conditional discharge under Section 35(1) of the Penal Code has had its six months gone.

Dated this 18th day of September, 2003.

J. M. KHAMONI

JUDGE