



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**APPELLATE SIDE**  
**CRIMINAL APPEAL NO.517 OF 2000**  
**(Being an appeal from Original Conviction and Sentence in Traffic Case No.4992 of 1999 of the Chief Magistrate’s Court at Mombasa – G.Katasi – RM)**

**MATU FONDO KALAMA ..... APPELLANT**

**versus**

**REPUBLIC ..... RESPONDENT**

**J U D G M E N T**

In this appeal the Appellant through his advocate appeals against the sentence imposed by the Trial Magistrate of 4 years imprisonment and order for disqualification from driving for a period of 1 year after completion of sentence. It is to be noted that the punishment for the offence charged “is not exceeding 10 years” imprisonment and disqualification from driving for a period of 3 years from date of conviction or at the end of imprisonment.

The grounds of appeal are stated as shifting the burden of proof to the Appellant, reaching a conclusion contrary to law and contrary to the facts, and others set out in the petition of Appeal.

I have perused the record and I find the deceased driving KJL709 was driving on a main road namely Airport Road. The appellant driving a tractor with a trailer emerged from a side road, and blocking the Airport Road so that the deceased drove the KJL 709 right underneath the trailer thereby injuring the passengers (PW.1 & PW.2) and killing the deceased (driver of the vehicle). There is ample evidence that although it was midnight the weather was dry, the road straight. There were street lights.

According to the Appellant he was driving out of the yard into the main road. He did not see any car. As he turned he heard a loud bang. He stopped his vehicle and got out. On inspecting he saw a small car trapped beneath his vehicle. He ran away and was arrested the following day.

From the above the only conclusion to be arrived at is that the Appellant drove out into the main road fast without ensuring that the road was clear. He failed to notice the approaching small vehicle. He should have given way to all traffic on the main road. It is unreasonable to suggest as Counsel for the Appellant has tried to do, that the small vehicle would have been so defective as to be the cause of the accident.

Evidence indicates that the deceased was in a sober mind having just been to the police station in respect of an earlier accident as clearly explained by PW.7 who said:-

**“driver requested to be allowed to drive to his house to take money to pay the bill.  
He was accompanied by relative of the victim”**

Perusing the judgment of the trial magistrate I am of the view that she properly found that the Appellant was guilty as charged and I see no reason to disturb her judgment.

The Appeal is hereby dismissed.

**Dated at Mombasa this 30th Day of August, 2001.**

**J. KHAMINWA**

**COMMISSIONER OF ASSIZE**

Read in presence of State Counsel Ogoti and Appellant.

Advocate not present.

**J. KHAMINWA**

**COMMISSIONER OF ASSIZE**