



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL APPEAL NO.856 OF 2000**  
**(From Original Conviction and Sentence in Criminal Case No.5047**  
**of 1999 of the Resident Magistrate's Court at Kikuyu:**  
**MWANGI NGANGA.....APPELLANT**  
**versus**  
**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant has appealed against the convictions on all 8 counts of the charge for causing death by obstruction, contrary to section 46 of the Traffic Act, Cap 403.

In the particulars of each count it was stated that on 9th December, 1999 at about 4.30 a.m. at Kinale Forest Area along Limuru - Naivasha Road the appellant caused obstruction by leaving a lorry, Reg. No.KYX 155, make Izuzu on the road and as a result. A motor vehicle Reg. No.KAG 980J rammed into the rear thereof thereby causing the deaths of eight of the passengers in the said bus.

In convicting the appellant the learned lady Magistrate said that she accepted the testimonies of the prosecution witnesses who were truthful. She said that P.W.4, 5, 7 and 8 were passengers in the bus and they saw the stationary lorry moments before the bus rammed into it.

I have considered the evidence and the judgment of the court below together with the submissions made by both sides before me.

In their evidence P.W.4, 5, and 7 did say that the lorry was stationary at the time it was hit by the bus from behind. However, although P.W.7 said in examination in chief that the lorry was stationary on the left side carrying logs (timber) in the cross examination he admitted that he could not clearly see ahead of him.

He further said that from Eldoret the bus was driven very fast. This brings the evidence of P.W.7 on the issue of stationary or not in doubt.

In his testimony P.W.8 admitted that he was not able to say if the lorry was stationary or not. He said that he saw the lorry when it was 50m away indicating the said distance in the Court below. According to him

the bus was overloaded and after passing Naivasha it was driven at a high speed chasing another vehicle called Keroka Executive. They were chasing one another. According to him the bus hit the lorry from behind when the bus was about to overtake the lorry.

Turning to the evidence of P.W.4, I note that in the cross examination by Mr. G. Kamau, the learned advocate for the appellant, the said witness (P.W.4) stated earlier that he had not seen the lorry prior to it being hit. However, later he changed and said that he saw the stationary lorry. This contradiction evidence in doubts.

In the testimony of P.W.5 he said clearly during cross examination that he did not see the lorry prior to the impact. He added that it was dark. Thus his said evidence materially contradicted his earlier evidence in examination in chief in which he had stated that the lorry was stationary when he saw it.

P.W.6, Joseph Kariuki Njoroge, the driver of the bus, Reg. No.KAG 980J stated that after he passed the first bus when he passed the 2nd bus he saw the lorry stationary ahead of him. He added that he did not see anything indicating the presence of the lorry. He added that he tried to avoid it, he also tried to brake but he hit the lorry with the front part of his bus. However, during the cross examination referring to the two buses - earlier stated he said - "I saw the buses about 200m away.

They had full lights. I did not see the lorry. I saw the lights of the bus.

I did not see the lorry. I know it was stationary because I hit it. The lorry was in the middle of the road. It had timber."

In further cross examination P.W.6 said -

"I did not see the lorry as the buses had put full lights and they blinded my eyes. I saw the lorry about 10m ahead".

The contradictions make the evidence of P.W.6 unworthy of credit.

In his defence the appellant denied the charge. He maintained that his lorry was not stationary adding that it was about 3 a.m. and he was driving it when the bus hit it from behind. His witness supported his evidence.

Mr. Gikonyo, the learned State Counsel does not support the convictions. With utmost respect, I agree with him.

I am satisfied that had the Magistrate considered the evidence with the care required, she would not have convicted the appellant.

I quash the convictions and set aside the sentence. The appellant be released forthwith.

**Dated and delivered at Nairobi this 27th September, 2000.**

**V.V. PATEL**

**JUDGE**