



**Majani v Republic (Criminal Appeal E015 of 2024)  
[2024] KEHC 14044 (KLR) (12 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14044 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E015 OF 2024  
DR KAVEDZA, J  
NOVEMBER 12, 2024**

**BETWEEN**

**GERALD LIGUYANI MAJANI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*((Being an appeal against the original conviction and sentence delivered on 16th November 2023 by Hon. Njagi (PM) at Kibera Chief Magistrate's Court Traffic Case no.1153 of 2019))*

**JUDGMENT**

1. The appellant was charged and after full trial convicted by the Subordinate Court for the offence of failure to report an accident contrary to section 73(3) as read with section 75 of the *Traffic Act* Cap 403 Laws of Kenya. The particulars were that on the 11<sup>th</sup> day of November 2019 at about 2015hrs along Naivasha Road within Nairobi County, being the driver of motor vehicle registration number KAC xxxJ make BMW, the appellant failed to report to the police a serious road traffic accident involving his motor vehicle and a pedestrian namely Boaz Nyangau Momanyi who sustained serious injuries.
2. He was sentenced to pay a fine of Kshs. 5,000 in default to serve three (3) months' imprisonment. Being aggrieved, the appellant filed an appeal challenging his conviction and sentence. He challenged the totality of the prosecution's sentence against which he was convicted. He argued that the injuries sustained by the complainant were caused by a handcart whose owner was never arrested and charged.
3. This being the first appellate court, we are guided by the ruling in *Okeno v. R* [1972] EA 32. In this case, the court opined that a court of first appeal ought to re-examine all the evidence afresh and in an exhaustive manner, to come up with its own conclusions without overlooking the conclusions of the trial court, bearing in mind that it never saw the witnesses testify.



4. The prosecution called four (4) witnesses in support of their case. The complainant, PW1, stated that on 11<sup>th</sup> November 2019, he was heading home from work along Kinyanjui Road and was facing oncoming vehicles when he was suddenly hit by a vehicle from behind. The next thing he recalled was that when he regained consciousness three days later, he found himself in Kenyatta Hospital, having sustained injuries on his right knee, at the side of his face, and on his pelvic bone. Further, he sustained injuries on his stomach. He was treated and discharged on 19<sup>th</sup> November 2019.
5. PW2, Hezron Momanyi, stated he was PW1's uncle. On 11 November 2019 at 11:30 p.m., he received a call from John Otach informing him that PW1 had been in a serious accident on Naivasha Road. PW2 sent John Kshs. 10,000 for PW1's medical expenses and advised transferring PW1 to Kenyatta National Hospital. PW2 arrived there at 1:00 a.m. and, after PW1's surgery, went to Riruta Police Station to report the accident but was told no report had been made. He then went to Kabete Police Station, where officers advised him to consult NTSA for vehicle details. He discovered the vehicle was owned by the appellant, obtained a copy of the records, and contacted the owner, directing him to Kabete Police Station. PW2 identified the appellant in court.
6. PW3, Shem Otach, testified that he was an eyewitness at the scene of the crime. He took PW1 to Coptic Hospital where he called the complainant's uncle via the complainant's phone, who sent them money to pay for PW1's medical expenses. The complainant's uncle told him to transfer PW1 to Kenyatta Hospital. He identified the appellant in court.
7. PW4, PC Keneth Gitonga testified that on 13<sup>th</sup> November 2019 at around 11:30 am, he received the report of the accident from PW2 and the particulars of the same. He prepared a sketch of the accident which he availed in court. He also produced the complainant's P3 Form on behalf of the late Dr. Kamau who had prepared it. Upon cross-examination, he averred that he did not inspect the appellant's motor vehicle because he had sold it.
8. In his defence, the appellant stated that on 11<sup>th</sup> November 2019 at around 6:00 pm, he was heading home from work via Ngong' Road where there was traffic. Three people approached his vehicle and requested his assistance in taking a certain man to hospital, to which he agreed. He averred that the victim's P3 form did not indicate any injuries from the back and that the abdomen injury indicated the fact that he was intoxicated.
9. In his appeal, the appellant challenged the totality of the prosecution's evidence against which he was convicted. He argued that the prosecution's evidence was marred by contradictions and inconsistencies.
10. Section 73 (1) and (3) of the *Traffic Act* provides as follows:
  - (1) If, in any case, owing to the presence of a motor vehicle on a road, an accident occurs whereby injury or damage is caused to any person, vehicle, dog, or cattle, the driver of the motor vehicle shall stop, and if required to do so by any person having reasonable grounds for so requiring give his name and address, and also the name and address of the owner and the identification marks of the vehicle.
  - (3) If in the case of any such accident as aforesaid the driver of the motor vehicle for any reason does not give his name and address to any such person as aforesaid, or if any injury has been caused to any person, dog or cattle, the driver shall report the accident at a police station or to a police officer as soon as reasonably possible, and in any case within twenty- four hours of the occurrence thereof.



11. This law requires a driver involved in an accident that results in injury to another person, damage to another vehicle, an animal, or certain forms of property, to stop and provide relevant personal and vehicle information to any individual with a legitimate reason to request it. If the driver cannot provide this information at the scene, they must report the accident to the police as soon as reasonably practicable and, in any case, within 24 hours. The rationale for this requirement is to ensure accountability and enable assistance for any injuries or damages caused.
12. In the instant case, it was established that the appellant was present at the scene and assisted in transporting the victim to the hospital. However, he did not file a report with law enforcement regarding the accident. The vehicle alleged to have caused the accident registered as KAC xxxJ, is confirmed by the appellant to be his. The appellant did not exchange contact information with any of the witnesses, who were strangers to him; he was subsequently traced through the vehicle's registration details and NTSA records.
13. Despite the appellant's assertion that he was not responsible for the accident, testimonies from prosecution witnesses, including an eyewitness (PW3), corroborate the occurrence of the accident. Furthermore, the appellant's defence that he stopped due to another vehicle being halted nearby is deemed unconvincing. The appellant's failure to report the incident constitutes non-compliance with Section 73(3) of the *Traffic Act*.
14. From the evidence of the prosecution witnesses, which was well corroborated, there is no doubt in my mind that the prosecution proved beyond reasonable doubt the offence charged. The conviction is therefore affirmed.
15. The appellant was sentenced to pay a fine of Kshs. 5,000 in default to serve three months imprisonment. During sentencing, the trial court considered the appellant's mitigation and that he was a first offender. The sentence imposed was therefore lawful and is affirmed.
16. The upshot of the above is that the appeal is found to be lacking in merit and is dismissed in its entirety.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 12<sup>TH</sup> DAY OF NOVEMBER 2024**

**D. KAVEDZA**

**JUDGE**

In the presence of:

Ms. Gulenywa for the Appellant

Mburugu for the Respondent

Achode Court Assistant

