



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**  
**AT NAIROBI**  
**Civil Appeal 126 of 1994**

**MICAH MITOKO NYABWA .....APPELLANT**

**VERSUS**

**THE HON. ATTORNEY GENERAL**

**PUBLIC SERVICE COMMISSION.....**  
**....RESPONDENTS**

**(Appeal from the Judgment of the High Court of Kenya at Nairobi (Hon. Justice S. E. O. Bosire)  
dated the 2<sup>nd</sup> June, 1994**

**IN**

**H.C.C.C. NO. 4854 OF 1988**

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**JUDGMENT OF THE COURT**

Micah Mitoko Nyabwa (the appellant) was at all material times employed as a driver grade 3 in the Ministry of Local Government and fell under Job Group C. By a letter dated 28<sup>th</sup> February, 1985, the appellant was told that he had totally failed to display competence and regard to other road users in his driving duties.

The appellant was told that despite final warning given to him per letter dated 31<sup>st</sup> October, 1983 (whereby he was requested to improve his conduct and work performance) he did not show any improvement and was involved in traffic accidents on 14<sup>th</sup> May, 1984, 28<sup>th</sup> June, 1984 and 8<sup>th</sup> August, 1984.

In regard to the accident of 14<sup>th</sup> May, 1984 the appellant was found guilty, by a court of competent jurisdiction, of three counts namely:

- (i) failing to stop after an accident contrary to section 73(1) of the Traffic Act.
- (ii) failing to report an accident contrary to section 73(3) of the said Act.
- (iii) careless driving contrary to section 49(1) of the Traffic Act.

The appellant was fined Shs. 500/=, 200/= and 500/= respectively in respect of the said counts.

In regard to the accident of 8<sup>th</sup> August, 1984 (involving vehicle registration numbers GK 611N and KSW 864) he admitted liability and the insurers of KSW 864 lodged a claim with the Attorney General.

It was alleged that he was negligent in driving vehicle registration number GK 611N, when GK 611N collided with an "O.T.C." bus on 28<sup>th</sup> June, 1994.

The appellant was asked to submit his representations explaining why the Ministry of Local Government should not take steps to retire him from the Civil Service in public interest.

The appellant may have made such representations but the same were not placed before the learned Judge in the superior Court. We do not see what he could have said in respect of the convictions we have already referred to. The appellant was represented by Counsel in the Superior Court and his response, if any, to the said letter of 28<sup>th</sup> February, 1985 was not produced before the learned Judge. It is not for us to say why such response was not produced save to infer that the response could not have helped much. Be that as it may, it was not before the Superior Court and therefore not before us.

By a letter dated 25<sup>th</sup> March, 1986, the appellant was informed by the Permanent Secretary, Ministry of Local Government that the public Service Commission had decided to retire him in public interest with effect from 25<sup>th</sup> February, 1986. He was paid all his dues plus one month's salary in lieu of notice; that is half salary which was withheld during the period of interdiction was also paid to him.

The superior court (Bosire J.) held that Regulation 33 of the Service Commission Act, (Cap 185) did not apply to officers who are disciplined by the Public Service Commission. We say, with the greatest of respect to the learned judge, that he fell into error when he so held. Part IV of the said regulations deals with discipline and Regulation 33 is part of the said part IV and if the appellant could have shown any prejudice that he may have suffered as a result of admitted non-compliance with the requirement of Regulation 33 (a) then he would have been right in complaining of irregular termination of his services.

But the factual situation is that the appellant was retired from the Civil Service in the public interest. This can be done only under Regulation 40 of the aforesaid regulations and we are of the opinion that the appellant was properly retired accordingly. He was employed as a driver and no employer would want the services of a driver who is too often careless. Despite the appellant's insistence on arguing that the nature of the offences is minor ( he referred to Regulation 41 (3) of the aforesaid regulations) we cannot overlook the fact that he was employed as a driver. Regulation 41 (3) allows disregard of minor offences in the discretion of the proper authority.

We find no substance in the appellant's complaints and dismiss the appeal but as we are differing with the learned judge on his view of application of Regulation 33 to the present case, we make no order as to costs.

Dated and delivered at Nairobi this 3<sup>rd</sup> day of February, 1995.

J.M. GACHUHI

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JUDGE OF APPEAL

R.O. KWACH

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JUDGE OF APPEAL

A.B. SHAH

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

**DEPUTY REGISTRAR**