

REPUBLIC OF KENYA

Manzi v Republic

High Court, at Machakos (Appellate Side) March 18, 1985

O’Kubasu J

Criminal Appeal No 966 of 1984

(Appeal from the District Magistrate’s court at Kitui, Traffic case No 1281 of 1984)

Advocates

Mr Ndunda for Mr Musyoka for appellant

Mr Nyagah for respondent

March 18, 1985, O’Kubasu J delivered the following Judgment.

The appellant was convicted of careless driving contrary to section 87 of the Traffic Act (cap 403). The appellant was fined Kshs 300.00, and in default to serve one month in prison.

Mr Musyoka who appeared for the appellant, and who demonstrated clear knowledge of the scene of accident pointed out that it was in fact the complainant who was to blame for this accident.

From the evidence on record the complainant testified that he was driving on his correct side of the road when the appellant emerged from Endau lane which was joining Kilungya street and collided with the complainant’s vehicle. From the evidence of the complainant Patel (PW1) the appellant did not stop at the T-junction as he joined Kilungha street. It would appear that the appellant was coming from the left-hand side junction. If that were the case then damage to the car should have been to the left hand side.

The appellant in his evidence testified that he was on his correct side of the road when the complainant came driving on his wrong side of the road and hit him. We have now examined the evidence on record and it is clear that the point of impact was to the complainant’s right-hand side of the road. In other words it was the complainant who drove on the wrong side of the road and hit the appellant. The damages to the complainant’s vehicle are all on the right hand side which shows that the appellant’s story was more acceptable. The complainant is said to have paid Kshs 1,000.00 to the appellant as compensation. This payment of compensation was not challenged. If the appellant was paid compensation by the complainant then this is an indication of negligence on the part of the complainant.

The learned senior state counsel (Mr Nyagah) did not seek to support the conviction. Mr Nyagah wondered why the complainant was not charged. On my own part I would say that the question of charging the complainant is indeed to be decided by Mr Nyagah as he is the representative of the Attorney General in this part of the country.

On my own assessment of the evidence on record I find that the evidence of the complainant was most contradictory with the evidence of other witnesses so that a conviction could not be upheld. Before I conclude I would wish to point out that the fine of Kshs 300.00, imposed was not only excessive but actually illegal since the section under which the appellant was charged and subsequently convicted provides for a maximum of Kshs 200.00 fine.

Section 87 of the Traffic Act (cap 403) provides :

“Any person who on any road or in any public place drives a vehicle other than a motor

vehicle without due care or attention, or in such a manner as to be an annoyance to the public, shall be guilty of an offence and liable to a fine not exceeding two hundred shillings.”

Hence, the appellant even if properly convicted could not be fined more than two hundred shillings.

In view of the foregoing I have no alternative but to allow this appeal. The appellant’s conviction is quashed and sentence set aside. If the fine was paid this should be refunded to the appellant forth with.
Order accordingly