



REPUBLIC OF KENYA

Muiruri v Republic

High Court, at Nairobi October 8, 1985

Mbaya J

Criminal Appeal No 586 of 1985

**(Appeal from the Senior Resident Magistrate's Court at Kiambu, R M Mutitu, Esq)**

Advocates

G M Muhoro for appellant

Miss L G Mbarire for respondent

**October 8, 1985, Mbaya J delivered the following Judgment.**

The appellant was convicted of permitting the use of unroadworthy vehicle contrary to section 55(1) as read with 58(1) of the Traffic Act, cap 403, Laws of Kenya. He was sentenced to a fine of Kshs 3000, or in default, 3 months imprisonment. He appeals against his conviction only.

The brief facts of this case are that the appellant is the owner of the motor vehicle registration number KQB 912, a Reyland lorry, which is not in dispute was unroadworthy when it was driven by David Njoroge Mwangi PW 3, his driver, on July 7, 1984 into and within the compound of Alliance High School, where it caused an accident. The evidence of Jimmi Joshi PW 1, the Chief Vehicle Examiner, is conclusive on the fact that the appellant's lorry was unroadworthy.

The issue is whether the accused permitted PW 3 to drive this vehicle to the scene of the accident on the material day. PW 3's evidence was that he had been sent by the appellant's wife to deliver some lunch to students at Muguga High School near Alliance. The school belongs to both the appellant and his wife. PW 3 further testified that it was his duty to drive the lorry every lunch hour to take food to the students, and that it is the wife of the appellant who was in charge of this and other vehicles, and it is she who used to give instructions to PW 3 to drive in the absence of the appellant.

With the above testimony of PW 3, I am satisfied that it was the wife of the appellant who actually gave PW 3 instructions to drive the lorry. But the wife must have been acting, as did find the learned trial magistrate, as the agent of the appellant. The result, therefore, according to the well known principle of agency, is that the instructions of the wife amounted to those of the appellant, in which case the appellant must be held to have permitted the use by PW 3 of the unroadworthy lorry. The criterion is whether the appellant was in control of the driver: see Prince Kesi Kagoro v R 1958 EA 673, and I hold on the evidence herein that the appellant had the control over PW 3 through the former's wife. In the circumstances this appeal must fail, and is hereby dismissed.