



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

APPELLATE SIDE

CRIMINAL APPEAL NO.344 OF 1982

(From original conviction and sentence in Traffic case No.12676 of 1981 of the District

Magistrate's court at Nairobi

JOSEPH MUTURI.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

(CORAM:ABDULLAH J.)

Mr. Oweggi for G.K. Mwirichia for the Appellant, Njoroge Mugo

(State Counsel) for the Respondent

JUDGMENT

The Appellant was charged with allowing a motor vehicle to remain in a position likely to cause an obstruction contrary to section 53(1) of the Traffic Act, Cap 403, and punishable by section 67 of the said Act.

The Appellant was convicted by the learned District Magistrate (Prof.) and was fined shs.1500 or 5 weeks imprisonment in default.

During the night of 6th August 1981, the Appellants' vehicle was right across the road at the entrance of the roundabout of General Waruingi Road and Second Avenue Eastleigh. One James Mwangi (PW1) who was driving his motor vehicle on the Second Avenue Eastleigh towards the roundabout saw this motor vehicle of the appellant blocking his passage and he stopped. Another motor vehicle driven by Joseph Mirugo (PW2), which was travelling behind the motor vehicle of James, collided with the rear of James' motor vehicle, which was pushed forward and hit the appellant's motor vehicle on the right side.

A police officer (PW3) who came to the scene, drew a sketch plan showing the position of the three motor vehicles.

According to the appellant, he was driving his motor vehicle towards the round about of General Waruinge Road to a scene of an earlier accident and which involved a bus of Kenya Bus Service, and to assist towing of the said bus. He could not go to the other side of the round about and his motor vehicle completely blocked the road. He saw another car following the first one, which did not stop and hit the

first car which was pushed forward in to the appellants' vehicle. Above testimony of the appellant clearly shows that his motor vehicle completely blocked the road. At this time, he saw a car coming from 2nd Avenue Eastleigh which stopped at the white line before entering the road. He saw another car following the first one, which did not stop and hit the first car which was pushed forward in the appellants' vehicle.

Be that as it may, both the drivers of the other vehicles claimed that there was no one in the motor vehicle of the appellant and that the appellant came there to claim that he was the driver, after they came out of their respective vehicles to inspect damages to their vehicles as well as the appellant's.

The trial magistrate was quite correct to accept the evidence of these two drivers having regard to the contradictory versions put forward by the appellant. The position of the motor vehicles as shown in the sketch plan manifestly indicates that the appellant's motor vehicle was blocking the road.

The trial magistrate was quite correct to observe that to found a conviction of obstruction the duration of obstruction was not material, and I concur with the magistrate in her judgment:

“The Legislature did not contemplate any duration whereby the allowing of a motor vehicle to remain in position on a road likely to cause obstruction or inconvenience or be a danger to other traffic using the road is effective. Once a vehicle is left in any position on the road to cause any of the above results even if the duration is for one minute, the offence matures, once the forbidden Act is performed. Otherwise, the legislature would have expressly specified the length needed before the offence matures. In the absence of that specification, the wording of section 53(1) of the Traffic Act shall be given the ordinary meaning of the words therein used.”

In my opinion the learned magistrate was quite correct to observe that the offence under section 53(1) of the Traffic Act is absolute.

The learned magistrate in convicting the appellant of obstruction appreciated that the charge before her was not causing an accident but allowing the motor vehicle to remain on the road in a position likely to cause an obstruction.

The trial magistrate fined the appellant shs.1500/= or 5 weeks imprisonment in default. The appellant was a first offender.

Maximum fine for a first offence punishable under section 67 of the Traffic Act is shs.1000/=.

Section 67 reads:

“Any person who contravenes or fails to comply with any of the provisions of the this part shall be guilty of an offence and liable, where no penalty is specifically provided, on first conviction to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding three months

It may be observed that section 53(3) of the Traffic Act empowers a court to impose a fine not exceeding 5000/= or to imprisonment for a term not exceeding eighteen months for leaving a vehicle on a road in such position or manner or in such a condition as to cause or be likely to cause any danger to any person. However, the appellant was not charged under that section.

Be that as it may, the fine of shs.1500/= imposed on the appellant was unlawful..

Having regard to the circumstances under which the appellant allowed his motor vehicle to remain on the road on the material time, I substitute a fine of shs.1500/= the balance of shs.1000/= be refunded to him.

The appeal is otherwise dismissed.

Dated at Nairobi and delivered this 14th day of September 1982.

F. E. ABDULLAH

JUDGE