



**IN THE COURT OF APPEAL**

**AT KISUMU**

**( Coram: Law, Miller & Potter JJA )**

**CRIMINAL APPEAL NO. 1 OF 1981**

**BETWEEN**

**OWILI.....APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant was convicted by the Senior Resident Magistrate at Kisumu on a charge of driving a motor vehicle on a road without due care and attention contrary to Section 49(1) of the Traffic Act, and was fined Kshs 700. He appealed to the High Court, where his appeal was summarily rejected, but the learned first appellate judge, in the exercise of his revisionary jurisdiction, set aside the fine and substituted an order of absolute discharge, conditional upon payment of Kshs 200 towards the costs of the prosecution.

It is difficult in the circumstances to understand why the appellant saw fit, or was advised, to institute a further appeal to this Court. The appeal to the High Court amounted to no more than a complaint that the conviction was against the weight of evidence, except for one ground stated as follows:

“The learned Senior Resident Magistrate erred in law in not observing the provisions of Section 77(2)(c) and (d) of the Constitution of Kenya.”

In our view, such a ground of appeal, bereft of particulars, is no ground at all, and was rightly ignored by the learned judge. It is meaningless and ineffective as it stands.

Even if the appeal should not have been summarily rejected, which we do not agree was the case, there was in fact ample evidence to support the conviction. It was not based, as Mr Owino submits, on the mere fact of a collision between two vehicles, which would have been a wrong basis for a conviction, see *Wallace v Reginam* [1958] EA 582. The learned Senior Resident Magistrate based his finding on lack of due care and attention on the appellant’s failure to keep a proper lookout and to see, as the complainant did, that the police were investigating an earlier accident and were engaged in measuring the width of the road. Careful drivers had stopped, but the appellant did not. Instead he collided with the back of the complainant’s stationary car. There was ample evidence to support the learned Senior Resident Magistrate’s finding that the appellant drove without due care and attention, and if the sentence imposed by the Senior Resident Magistrate was somewhat excessive in view of the appellant’s good driving record, that has been put right by the learned judge in his revision order.

This appeal is completely without merit and we order that it be dismissed.

**Dated and Delivered at Kisumu this 18th day of June 1981.**

**E.J.E.LAW**

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**JUDGE OF APPEAL**

**C.H.E.MILLER**

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**JUDGE OF APPEAL**

**K.D.POTTER**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**