



**Kariuki v Republic (Criminal Appeal E011 of 2023)
[2025] KEHC 15699 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15699 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL APPEAL E011 OF 2023
EM MURIITHI, J
OCTOBER 30, 2025**

BETWEEN

STANLEY MURIITHI KARIUKI APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from original conviction and sentence in Wang'uru
PM's Court Traffic case NO. 112 of 2019 delivered on 24/2/2023 by Hon.
P.M. Mugure, PM (and delivered on her behalf by Hon. F. Mutuku, PM))*

JUDGMENT

1. The appellant Stanley Muriithi Kariuki was aggrieved by the Judgement of Hon. P.M. Mugure, PM given at Wang'uru on 24th day of February, 2023 in Wang'uru Traffic Case No. 112 OF 2019, and he appealed against the same on the following grounds:
 1. That the learned magistrate erred in Law and Fact in making judgment against the weight of evidence.
 2. That the Learned magistrate erred in Law and Fact in not finding that the prosecution did not prove its case beyond reasonable doubts.
 3. That the Learned Magistrate erred in Law and Fact in disregarding the inconsistencies, discrepancies and contradictions in the evidence adduced by prosecution witnesses.
 4. That the Learned Magistrate erred in Law and Fact in failing to fairly evaluate and analyze the evidence adduced before her.
 5. That the Learned Magistrate erred in Law and Fact in shifting the burden of proof to the appellant.



6. That the Learned Magistrate erred in Law and Fact in unfairly dismissing the appellant's evidence and defence.
7. That the Learned Magistrate erred in Law and Fact in meting out an excessive sentence.

Brief facts

2. The Appellant herein was charged with the offence reckless driving contrary to Section 47 (1) of the [Traffic Act](#) Cap 403 Laws of Kenya. The particulars of the offence were that on 23rd March, 2019 at about 11:00 hours at Defathers Road in Mwea East Sub-County within Kirinyaga County being driver of Motor Vehicle Registration Number KCP 041L make Honda Fit drove on the said road recklessly by overtaking a fleet of Motor Vehicles on a continuous yellow line.
3. The appellant denied the charge and the matter proceeded to hearing with the Prosecution calling three witnesses to prove its case against the Accused Person.
4. Upon being put on his defence, the Appellant testified and called one witness by the name of Alice Wakaria Muriithi, his wife to support his case.
5. On the 24th February, 2023 the court delivered its judgment and found that that the prosecution had proved its case beyond reasonable doubt and thereby proceeded to convict the Appellant herein for the offence of reckless driving contrary to Section 47 (1) of the [Traffic Act](#) Cap 403 Laws of Kenya. Upon mitigation, the Court imposed the sentence of a fine in the sum of Kshs.60,000/= and in default imprisonment for one (1) year.
6. The appellant appealed.

Prosecution Case

7. PW1 – No.77666 Sergeant Mohamed Suleiman of Wang'uru Police Station said that on 23/3/2019 they were performing traffic duties at Difathas. CPL Emily, PC Maingi and him were on duty. They flagged down KCP 041L Honda Fit. CPL Emily informed driver was overtaking carelessly on a sharp corner on a continuous yellow line. He was asked to escort the accused to be charged for reckless driving. Accused refused to be escorted. He took himself to the police station and was given cash bail of Kshs.20,000/ and was then charged in this case for reckless driving. He said he saw the accused being stopped. He did not see the accused overtake but there is a sharp corner and a continuous yellow line that does not allow vehicles overtaking. There were oncoming vehicles from the opposite direction. The accused was driving from Embu — Mwea direction. Investigating officer preferred the charges.
8. On cross examination he stated that it was about 11.00am.and there was a road block without spikes. He said it was CPL Emily stopped the vehicle. He was attending to another vehicle. He was in-charge of the personnel at the road block. He talked to accused after he was flagged down; and the accused drove himself to the police station. He instructed CPL Emily to take necessary action. There were children inside the vehicle. He was not aware CPL Emily had asked for a bribe.
9. PW2- NO.82252 P.C Kennedy Maingi Naromoru of Wang'uru Police station doing Traffic duties. On 23/3/2019 he was along Mwea — Embu road at Difathas with Sergeant Mohammed, Cpi Emily and P.C Mutua. About 11.00hrs he saw a vehicle overtaking at a continuous yellow line on a bend KXP 041L Honda Fit. There were other vehicles moving on opposite direction. They flagged down vehicle and it stopped. CPL Emily addressed the driver. He continued with other duties. Later, the driver was arrested and charged. He recorded a statement. The accused is the person driving the vehicle and he had driven the vehicle to the station.



10. On cross-examination, he stated that the accused's vehicle stopped. CPL Emily went to talk to the driver. He was about 5 metres away from vehicle. He saw the accused through the window. He did not see any passengers. He was not the investigating officer. CPL Emily is the investigating officer. There was a curve. No road sign showing there was a sharp corner. There were vehicles from oncoming traffic. No other driver complained. Other vehicle avoided collision and passed the roadblock. It was a designated road block. There are no plates of other vehicles recorded. Initially Difathas was a patrol base 2019 under Wang'uru Police Station.
11. On re-examination, he said that the road has markings. Very clear dotted and continuous yellow line. The accused overtook on a continuous yellow line. He was deployed by sub-county commander OCPD. Difathas was Patrol base Wang'uru Police Station.
12. PW3- No.66202 CPL Emily Musingi of Wang'uru police station doing investigation and traffic duties. On 23/3/2019 she was at Difathas along Mwea — Embu road with PC Maingi, Sergeant Mohammed and PC Mutua — traffic duties. About 11.00 am, PC Maingi was about 6 — 7 meters from her on the same side Embu-Mwea lane. The other two officers were on the other lane. She saw motor vehicle KCP 041L Honda Fit grey in color emerged from a sharp corner a black spot, very dangerous accidents had occurred. It overtook several vehicles. Flagged the vehicle to stop. The vehicle stopped where she was after she intercepted. She checked the vehicle. Informed the driver of the offence he had committed. He had a young family a lady and infants.
13. She informed sergeant Mohammed about it. The vehicle was allowed to leave on condition the driver would bring vehicle to the station. He was excused to take the family home. Later at around 2.00pm the driver came to the station. Base commander was alerted. His lawyer followed him to the station. He deposited cash bail to appear in court as advised. Dangerous overtaking caused vehicles on the opposite traffic stop to get way to avoid a collision. She charged the driver, the accused in this case, with reckless driving. There was a sharp corner. Road marked continuous yellow line. Road has a sharp corner. She engaged with the accused for 5 minutes.
14. On cross-examination, she stated that the accused wanted to overtake all vehicles. The Corner is very sharp. It has a depression. You can see vehicles other side. There is no road sign. There was construction on the road. No road block. The police were doing traffic checks and they did not have spikes. They are authorized to go do road checks by the [Traffic Act](#).

Defence case

15. DW1- Stanley Murithi Kariuki testified that on 23/3/2019 he was driving my vehicle at 11.00hrs from Embu to Kutus. While at Difathas, there was a major traffic jam. One lorry was ahead of his vehicle. Many vehicles were behind him, and he had led other vehicles in overtaking the lorry. There was no corner/bend. He overtook and other vehicles overtook him. He swerved back to his lane. About 100 metres after overtaking, he was flagged down by a lady traffic officer. He later learnt she was PC Emily. He slowed down and Probox overtook him. By the time he stopped, there were 2 officers on his lane and 3 officers on the opposite lane. The Probox was also flagged down. Officer Emily said that he overtook wrongly. He refuted the allegation since there was no vehicle on the opposite direction. She said there was a corner. He refuted there was a sharp corner since there was no NTSA Sign post showing there was a sharp corner, there was a sign indicating there were bumps. The road was marked. A discussion ensued and she took his driving license. He said he was in vehicle together with his wife and children. After 20 minutes he decided to get public means for his wife and daughter and a relative and CPL Emily asked where he was going. He told her that she was wasting time and another quarrel ensued. She ordered him to go to Wang'uru Police Station.



16. Other officers CPL Mohammed and another officer joined in. he refused to leave without his license. He went to get his advocate and went to Wang'uru Police Station. CPL Maingi talked to him. Later on after case came to court, a month later he took photographs. He took them 24/ /4/2019 to prove the road was under construction and there was no continuous line. D.Exhibit 1 to 5.
17. On cross-examination, he stated that the shoulder of the road was not re-carpeted. The witness said the road was being re-carpeted. He was charged for overtaking on a sharp corner. The photos show a corner. Half of the road is straight, the other not. There is a car going down the hill. He has been a driver from 2001. He doesn't know the working on the road where there is a corner and a hill. There should be a yellow line. One is not allowed to overtake where there is a corner and a hill.
18. On re-examination, he stated that there was no yellow line on the road from the photos. There was no sign for bend.
19. DW2: Alice Wakaria Muriithi, the accused's wife who works as a teacher testified that on 23/3/2019 they were returning from Embu to Kutus at Seed of Hope. Her husband overtook a lorry. He was driving. He was flagged down by officers (traffic). She had 2 children in the car. Officer spoke to her husband. His driving licence was taken by the officer. After sometime the children got restless. She was to get a matatu to ferry them to Kutus. Her husband was asked to go to Wang'uru Police Station. He dropped them home then he went to station. The road was being re-carpeted.
20. On cross- examination by the prosecution she stated that she was in the vehicle the accused was driving. He was stopped by officers. He overtook a lorry not a fleet of vehicles. Her attention was on the children. He was informed he had committed a traffic offence. There was an argument between the accused and the officers.

Appellant submissions

Whether learned magistrate erred in law and fact in making judgment against the weight of the evidence

21. It was the Appellant's evidence in court that on the material dated there was major traffic on road. One lorry was ahead of him and there were other vehicles behind him. He led other vehicles in overtaking the lorry. After overtaking the lorry other vehicles followed and overtook him and he swerved back to his lane. About 100 metres after overtaking, he was flagged down by a traffic officer. His witness who happened to be in the vehicle with him corroborated his testimony before court.
22. It was also his evidence that there was no comer/bend, continues yellow line and there no vehicles on the opposite direction when he overtook the lorry.
23. The appellant submits that no evidence was adduced by the Prosecution that there were road signals prohibiting overtaking at that specific area. It was the evidence of PW2, Kennedy Maingi during cross-examination that there was a curve and there was no road sign showing that there was a sharp corner. PW 3, Emily Musingi also corroborated the evidence of PW2, during cross-examination that there were no road signs.
24. The Appellant herein on his part disputed the existence of a sharp corner or yellow line as there was no road sign showing the existence of the same. He produced several pictures that were taken a month after the incident and none of the said pictures showed a sharp corner or yellow line. The prosecution on their part did not adduce any evidence before the court to prove the existence of a sharp corner or a continuous yellow line on the material day.



25. Lastly, there was no accident that occurred as a result of the Appellant herein overtaking the lorry. Also, no complaint was ever made by any of the road user. The appellant suggested police support for one of their own and relies on the case of *Nahashon Mutua v. Republic* [2020] eKLR where the Court of Appeal held as follows:

The contradictory and evasive nature of the evidence of the police officers who were on duty on the material night was self-serving, and intended to cloud the evidence of other witnesses, to cover up any complicity on their part. It is for this reason that we turn to the evidence of the suspects who were in the cells in order to determine the credible version between the evidence of Ali, Rama and Tom supporting the version that Mutua assaulted Martin, and the evidence of Njihia supporting the version that Martin was assaulted by a fellow inmate in the cells. The evidence of Ali, Rama and Tom is consistent with the evidence of Victor who testified that he found Mutua beating up Martin. We are cognizant of the fact that these witnesses were all suspects who were in the police station on allegations of having committed various offences. That notwithstanding, the suspects remained innocent until proved otherwise. Their character could not be questioned merely by their having been in the cells as suspects. There is no evidence to show that they were hell bent to incriminate Mutua. The witnesses explained how Mutua literally tortured Martin by beating him up while at the same time forcing him into a drum full of water. The witnesses were subjected to rigorous cross-examination, but remained consistent in their evidence.

Respondent submissions

Whether the learned magistrate erred in law and fact in making the judgment against the appellant

26. Section 47 (1) of the *Traffic Act* provides that any person who drives a motor vehicle on a road recklessly, or at speed, or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road and the amount of traffic which is at the time or which might reasonably have expected to be on the road, is guilty of an offence.
27. The Appellant submitted that on the material date there was major traffic on the road and one lorry was ahead of him and there were other vehicles behind him. He led other vehicles in overtaking the lorry after which he was flagged down by a traffic officer. He also insists that there was no corner bend, continuous yellow lines nor vehicles on the opposite direction when he overtook the lorry.
28. The prosecution through its witnesses testified that the Appellant was overtaking carelessly on a sharp corner on a continuous line. They further testified that overtaking at a place with a continuous yellow line in violation of the traffic laws. Out rightly, they submit that such act of overtaking at a continuous yellow line, without any sufficient explanation, is an act of recklessness.

Issue

29. Whether the learned magistrate erred in law and fact in making judgment against the weight of the evidence

Analysis

30. On this first appeal, it is the duty of the court to re-examine the evidence before the trial court and arrive at its own conclusion before considering whether the decision of the trial court is to be affirmed



or set aside, bearing in mind that the trial court had opportunity to see and examine the witnesses. See the principles set out in *Okeno v Republic* [1972] EA 32, where the Court of Appeal held that:

“The first appellate court must reconsider the evidence, evaluate it itself, and draw its own conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”

31. Under Section 354 (3) (a) of the Criminal Procedure Code, this Court may exercise powers as follows:

- “(a) in an appeal from a conviction—
- i. reverse the finding and sentence, and acquit or discharge the accused, or order him to be tried by a court of competent jurisdiction; or
 - ii. alter the finding, maintaining the sentence, or, with or without altering the finding, reduce or increase the sentence; or
 - iii. with or without a reduction or increase and with or without altering the finding, alter the nature of the sentence;”

The offence

32. Section 47(1) of the [Traffic Act](#) provides that:

“Any person who drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road and the amount of traffic which is at the time or which might reasonably be expected to be on the road, is guilty of an offence.”

Analysis of the Evidence

33. The prosecution called three witnesses (PW1, PW2, and PW3), all police officers, who testified that the Appellant overtook several vehicles on a continuous yellow line near a sharp bend along the Embu–Mwea road. They maintained that the act of overtaking at such a section of the road amounted to reckless driving as it posed potential danger to oncoming traffic. However, PW1 did not see the accused overtake and PW3’s statement that the accused’s vehicle had at “a sharp corner a black spot, [where] very dangerous accidents had occurred [overtaken] several vehicles” was not supported by the testimony of the two colleagues PW1 and PW2. Indeed, the allegation that it was at a black spot is negated by the lack of a warning sign of a sharp bend in the testimony of the PW1 and PW2.
34. The prosecution’s evidence was not corroborated by any independent witness or physical evidence (such as photographs or sketch maps) to confirm the existence of the continuous yellow line or the alleged sharp corner. PW2 and PW3 both admitted on cross-examination that there were no road signs showing a sharp bend. PW3’s testimony with respect to the alleged dangerous circumstances of the accused’s overtaking is similar to that of a single witness as there is no corroboration on material respects of the sharp bend, road sign warning of a bend balck spot and accused’s overtaking several vehicles.
35. The Court in *Kiilu & another v Republic* [2005] KECA 335 (KLR) emphasized that a conviction must be based on evidence that leaves no reasonable doubt and emphasized the need to test with greatest care the evidence of a single witness.



36. In the Accused’s defence, the Appellant (DW1) and his witness (DW2, his wife) testified that there was no sharp bend or continuous yellow line, and that there were no vehicles approaching from the opposite direction. He produced photographs taken about a month later, showing the road under construction, to demonstrate the absence of road markings. The appellant submitted that, there was no accident that occurred as a result of him overtaking the lorry. The absence of evidence of danger, accident, or obstruction to other motorists renders the charge of “reckless driving” doubtful in the circumstances of the case to support a finding of dangerous driving.
37. This Court respectfully agrees with the Court in *Josephat Doe Okiria v Republic* [2010] KEHC 2271 (KLR) where Muchemi J. held that:
- “The mere act of overtaking does not constitute reckless driving. The prosecution are duty bound to prove that the Appellant drove in a reckless manner taking into regard all the circumstances and the condition of the road.”
38. Weighing the evidence before the trial court as a whole, (see *Okethi Olale v R* (1965) EA 555), there is a doubt as to the state of the road at the scene of the alleged offence: whether there was a sharp bend, a warning sign for such bend; whether there was a continuous yellow line on the road; and whether the accused driver had overtaken a line of vehicle dangerously. The police officer PW1 who was with PW3 did not see the accused DW1 overtake. It would appear that the prosecution was driven by the protracted quarrel and exchange that ensued the PW3 stoppage of the vehicle as testified by the accused DW1.
39. The Prosecution has a duty to prove offence to a standard beyond reasonable doubt. In this case, the Investigation Officer PW3 should have produced photographs at the scene in support of the prosecution and to counter the evidence by the defence whose duty in raising a reasonable defence is only a degree of balance of probabilities, and in the absence of the Prosecution’s proof, the court is bound to accept the photographs produced by the defence as the true state of the scene of the alleged offence.
40. The learned trial magistrate’s finding of guilt was against the weight of the evidence. The inconsistencies in the prosecution’s case, lack of corroboration, and the unaddressed contradictions created reasonable doubt as to whether the Appellant’s manner of driving was reckless within the meaning of Section 47 (1) of the *Traffic Act*.

Orders

41. Accordingly, for the reasons set out above, the Court finds that the charge was not proved to the required standard of beyond reasonable doubt and the appellant is acquitted of the offence of reckless driving.
42. The is acquitted, and the conviction of the accused by the trial court, for the offence of reckless driving contrary to section 47(1) of the *Traffic Act* is quashed and the sentence for the payment of a fine of Ksh.60,000/- in default imprisonment for one (1) year is set aside.

Orders accordingly.

DATED AND DELIVERED THIS 30TH DAY OF OCTOBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:



Mr. Mamba for the DPP.

Ms. Muturi for the Appellant.

