Case Number:	Criminal Appeal 22 of 1987
Date Delivered:	19 Oct 1987
Case Class:	Criminal
Court:	Court of Appeal at Nairobi
Case Action:	Judgment
Judge:	John Mwangi Gachuhi, James Onyiego Nyarangi, Fred Kwasi Apaloo
Citation:	Daniel Karanja Mwangi v Republic [1987] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Criminal
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: NYARANGI, GACHUHI & APALOO JJA)

CRIMINAL APPEAL NO 22 OF 1987

MWANGI ……APPELLANTS

VERSUS

REPUBLIC……RESPONDENT

JUDGMENT

On September 18, 1987 we allowed an appeal from the judgment of the High Court which dismissed an appeal from the conviction of the appellant of the offence of causing obstruction contrary to section 53(1) of the Traffic Act by the District Magistrate, Narok. We indicated that we would give our reason later. This we now do.

There was no controversy about the facts. Taking the prosecution's case together with the unchallenged explanation of the appellant, the facts are these: On February 17, 1986, the appellant was driving an Isuzu lorry No KXA 584 along the Narok – Nairobi road in the direction of Nairobi. On reaching a place called Suswa, two of his tyres went flat. The vehicle thus became immobile. According to the prosecution, the vehicle lay "across the road".

In order to warn approaching traffic, the appellant placed green branches on the road. At about 5.30 am, another Isuzu lorry, No KVG 762 ran into the disable vehicle. The appellant said it was driven at speed and ignored the green branches. That vehicle was extensively damaged.

The police were then invited to the scene. After making their usual investigation, they charged the appellant with the offence of causing obstruction contrary to section 53(1) of the Traffic Act.

The particulars of the offence were given as follows:

"On February 17, 1986, at Suswa area along Narok – Nairobi road……. Being the driver of a motor vehicle KXX 584 Isuzu, you did cause obstruction to a motor vehicle registration KVG 762 and caused accident by parking the said motor vehicle across the road".

Although the appellant pleaded guilty, he explained how the vehicle came to lie across the road at that time and what he did to warn other road users of his disabled vehicle. Nevertheless, he was convicted of the offence and an appeal to the High Court was dismissed.

The only substantial ground urged before us on this second appeal, was formulated as follows:

"The learned judge erred in law and misdirected himself in upholding the conviction of the appellant on the charge of obstruction …… when the said plea was equivocal by virtue of the matters raised by the appellant in mitigation which were inconsistent with a plea of guilty".

We thought this was a valid complaint. To park a vehicle, involves an element of volition. A lorry which was disabled and was therefore immobile on a road, cannot properly be said to be “parked”. Although the Traffic Act by section 2 provides a statutory meaning of some of the words used in the Act, the word “park” was not defined. That being so, the normal judicial approach is to ascertain its ordinary meaning from a reputed dictionary. The Shorter Oxford English Dictionary gives, *inter alia,* the following meaning of the word park, namely, 1 to leave (a vehicle) in a car park, 2 to leave in a suitable place until required.

It is plain the appellant did not, of his own volition leave the lorry on the road. It remained there because of the failure of its two tyres.

In those circumstances, to say the appellant caused obstruction by parking his lorry across the road would fly in the face of the facts.

Before us Counsel for the respondent conceded that the lorry was not parked on the road as charged but he contended that the appellant committed an offence against section 53(2) because as there was a breakdown, the appellant incurred a statutory obligation to remove the vehicle from the road “as soon as possible”. He said the appellant failed to do that and was caught by the subsection. Counsel accordingly invited us to substitute that offence for the one charged.

We declined to do so for two reasons. First, the appellant was not charged with that offence and had he been so charged, he may well have had a plausible explanation. We could not speculate on that. Second, there was no evidence how long the disabled vehicle remained on the road. So we could not say whether he failed to remove it “as soon as possible”, to use the language of the subsection.

In the circumstances, we allowed the appeal, quashed the conviction and Mwangi v Republic discharged the appellant.

October 19, 1989

NYARANGI, GACHUHI & APALOO JJA