

**R. v. JAILOS KAMBULE.**

CRIMINAL REVIEW CASE NO. 50 OF 1939.

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*Employment of Natives Ordinance section 75 (1)—wilful breach of duty—allowing third person to drive lorry.*

The facts appear in the judgment hereunder. The Employment of Natives Ordinance is now Cap. 171 and the subsections of section 74 referred to in the penultimate paragraph of the judgment were repealed by Ordinance 27 of 1940.

**Robinson, A.C.J.:** I think the Magistrate found the same difficulty as I do in this case. The defendant was charged in that being a servant, by wilful breach of duty, did do an act tending to serious risk to a motor lorry placed by his employer in his charge. The facts were that the defendant was employed as a lorry driver and he permitted another native to drive the lorry and there was an accident.

I know the defendant pleaded guilty but the form of charge probably was:

“ Did you allow Chaima to drive your master’s lorry of which you were in charge and did you know you ought not to have done so and in the result do you admit there was an accident ? ”

All that was admitted, but do those facts show any offence *contra* section 75 of Cap. 62 ?

Defendant before he could be found guilty had to do an act tending to serious risk to the lorry. This section implies an overt act. If an alternative word, e.g., “ deed ” is used instead of “ act ” I think the meaning of the section becomes clear. It could never be said that allowing someone else to drive the lorry was “ doing a deed ”.

Another point is that even if allowing Chaima to drive was “ doing an act ”, there is nothing to suggest on the record that it must necessarily be an act “ tending to serious risk ” to the lorry. Chaima may have been, fundamentally, a far more skilful driver than the defendant himself.

Obviously the defendant committed a breach of duty to his employer but the facts must fit a penal provision before it is punishable. If the employer had given strict instructions that the defendant was to drive and no one else, then I think section 74 (4) or perhaps (7) would be applicable.

As it is, I much regret, because the defendant needed a salutary lesson and the sentence was very appropriate, that the conviction must be quashed and the £1 fine be refunded.