

TANZANIA / JUDGMENT

19890619 TZHC Dar es Salaam2

COURT
TZHCDECIDED
19 June 1989

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HT TITE IIIGII COURT OF r:i'L.i'TZlJUt,. 11.T DLR ES SJLIJ:JI CRINDJf~L f.PPEl'.L NOe 61 OF 1909 1 o;;ncnTAL CRil!illJii.L Cl~SE H0,1121 OF 1989 versus TTIE REFUBLIC,p o ... 0 0 ti O O · ~ e o O ~-· 6 0 o. d O O O O O O .,RESPONDTHIHT JldJG.NIENT This is an appeal against sentence. Tho n.ocu.oed was convicted of t!le offence of driving a notor vellicle on tho public ron.cl uhilo (. not in good nech~u.cal repair contrnry to suction 39 of the Road Traffic l.ct 2.J.1d un.s sentenced to two weeks :il:lpr:i.solmcnt wi tb.out tho option of a fine... It is tho appellant 1s 02,so "G:J.c],t tho appcillo.nt s!lould have boon given the option of a fine r.101~0 so bocn.u.so the d0f'oots uore not very serious,. The Republic supports tho sentence .?Jld c..rguos that t!J.o sontonoo of inprisonr.10nt was in order as the penalty section (S...39(5) docs not put the custodial sentence in default-'c; of a :fine but as nll al toriU'..tivic s0litenco. :t agree with .1"1:r, I(yuld lo&···ned State Attorney that tho iri2.l Court was ri@lt teolUlioally in iuposing c.. custoc.linl sentence 'because section 39 (5) docs not put tho custodial sentence to be in default of a fine. But. tald:~ig the circunstances of tl::is cascj I cl-o not find t:C.e custodial sentence to be propore Tho a,ppellant should hc.vo been giv011 the option of a fine. More-over short custodial son:toncos nre -not mrl. table for first off enders as this court has llad an occasion to ror.1n.rlc. I therefore set aside tho custodial.. sontonco of two wqoks inprison"1ont and instoo.cl I will pass a SCi1"conoe of a f"ino. Now bearing i11 nind that t:t:c 0,ppella.nt l:cs almost conplotcd ~iis sontonccs 'boc~o he hes only two clcyo to goJ I sentence tho appoll~1.t to e. fine of 200/- · or one no11.tl1 1 s inprisonnont in dofaul t ·. -:;.Pi~,i;" - -:~::~ ; JUDGE 19/6/1989,;

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