

TANZANIA / JUDGMENT

# 19721124 TZHC Dodoma

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TZHCDECIDED  
24 November 1972

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...- .4. ...- T\T r\TT T'rLf (1(' T0' i j.i\_i uiL uj. AT iO DONA AF:PhILLATE JUh.LhDICTION TI \:.)?1 ('CT) i)f,T .0. 'Tfl iJU.t.J ..J .V 64 OF 1972 01LCIhAI CRI1IIAAL CASE iLO. 3 OP 1971 OF THE DI TRICT COURT 01? RLJHGWE D132HI(1T AT TUIJyU Before A. alati sq oe Resident Magistrate ATHU1HI / ALIY Appellant ( Original Accused) Versus TH1 REPUBLIC . . Q. ,\*, Rosondent (Original Prosecutor) Charge: Causing Death by Recless or Ba erous Driving, contrary f section 44A (i) (a) of the Traffic Ordinance, Cap, 168 of the laws ç . JIUCT]hENT . !7[ III:[I'IA iCJ. . The ac9ueed wae chgged. with causin. ) death by RECKLESS or DAHGi.i:l0L3 ny e, hasis)"in answer the charge the accused replied It is true a r&ply which courts have always held to be not unequivocal % The charge itself did not specify whether the accused caused death through dangerous driving or through recklessness. He was thus at some disadvantage right from L. start. He could not tell .-'the prosecution would allege recklessness or dangerous driving Had he chosen to defend hiuelf, he would have found it hard to prepare his defence. The charge was thus duplex in that it did not give reasonable information as to the nature of the offence chargedu (s,135 Cr, Procedure Code,) Before considering whether or not the particulars supplied disclosed the offence it woul(i be useful and fair to the prosecution to reproduce the particulars recorded at the trial: On 6/8/71 at 10.00 a,u,, accused was driving a (motor veJicle) TDO 347 a (Horcedes Benz) lorry, Accused was coming from a society rith bags of rice. He was with other people. Then in village of Ndabalo Kyela, accused saw a woman NwaThene Ilwahanali walming on her correct side of the road about 150 yards aay0 In front -,ATas a UNT bus and accused was then raeeting this bus, hon lie met the bus. accused had to leave room for the UNT • pass. The deceased Mwanbena was 1+ ft. away from the edge of the road lien af er the BET tue had passed the accused entered the road again and as he did so he swerved into the road and the board of th lorry he was driving hit deceased on the chest. Deceased .. . IV -2-- Deceased was thrown off the road and dried instantly. Accused :'en to the Police 3tation to report the accident and he was charged for this offence. These part icul rs do not show that the accused was either reckless or that he drove dangerously. If anyone was reckless it was the deceased who did not seem to care about the two vehicles which were making way for each other. Stopping the vehicle would not have helped because t].ie accused did not hit the deceased with the front of his vehicle. The deceased was hit by the board of the lorry as it swerved tore-enter the road. 1 he accused could not have seen the deceased when ho hit her because the drjver's cab had already passed her when she was hit. It was not his recklessness or dangerous driving, which caused the accident. He was not required to stop and stopping would not have avoided the accident anyway. What

could have avoided the accident was t deceased keeping a safe distance from the road. LM The accused was denying the charge when ho said in mitigation that: 'I had to dodge the DMT bus which cane right into the middle of the road as otherwise I would have collided with it. When had dodged both the bus and the deceased by bad luck the body of the vehicle hit the deceased' By 1115 words t:.o accused was denying that ho drove either dangerously or recklessly. A plea of not guilty ought therefore to have been entered so that evidence to prove reckless or otherwise could be brought forward. A.nd if what the prosecutor told the court was all the evidence that he had hoped to adduce, then the accused would have been acquitted. For, the particulars did not disclose the offence, in the result the conviction of the accused, unsupported by evidence as it was, cannot be allowed to stand. It is hereby quashed and the sentence thereof set aside 9 The accused is to be released forthwith unless there is lawful cause to continue 1.11oldinig him. DO DOMA iT. H. A. L'IKIM. 24th November, 1972. Ag. Judge.

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Prepared on 14 October 2026 · Esheria