

TANZANIA / JUDGMENT

republic vs felisian selestin

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COURT
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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT SONGEA (CRIMINAL REVISION NO. 15 OF 2019) (Originating from Songea District Court in Traffic Case No. 50/2019) THE REPUBLIC..... ORIGINAL PROSECUTOR VERSUS FELISIAN SELESTIN..... ORIGINAL ACCUSED

RULING

Date of last order: 20/01/2020 Date of Ruling: 01/02/2020 BEFORE: S.C. MOSHI. J. The main question is whether the trial court did comply with mandatory requirement under section 27 (1) (a) of the Road Traffic Act [CAP 168 R.E. 2002]. I was prompted to open a Revision suo motu to correct the irregularities and unlawful order pertaining to Traffic Case No 50/2019 which was tried in the District court of Songea at Songea. Brief back ground of the case is that the accused [original accused] was arraigned before the District Court of Songea at Songea for the offence of causing death through careless driving of a motor vehicle contrary to section 41, 27 (1) (a) and 63(2) (b) of the Road Traffic Act [Cap. 168 R.E 2002]. It was alleged that on 1st day of September 2019 at Ngadida Village - Madaba along Songea road within Rural District of Songea in Ruvuma region being the driver of Motor Vehicle with Registration Number T. 173 DRD make Toyota 1ST did drive the said motor vehicle on public road caressly as a result he knocked a pedestrian one Nasma Shomary and caused her death. The accused pleaded guilty to the charge, he was found guilty upon his own plea of guilty and he was sentenced to pay a fine of T.sh 50,000/= or to serve a term of six months in prison in default of fine. Further, the court was of the view that there were special reasons for cancellation of accused person's driving license for a shorter period; it was cancelled for six months and was disqualified to obtain a driving license for the same period i.e. six months. The immediate issue is whether Section 27(1) (a) of the Traffic Road Act was complied with. It is apparent that the requirements set by the provisions of section 27(1) (a) of the Traffic Road Act Cap, 168 R.E 2002 are mandatory; the section reads thus: Any court before which is person is convicted of

- (a) A first offence under section 40,41, or 44 or paragraph (c) of section 52 shall cancel such person's driving license for a period of not less than three years and shall declare that person to be disqualified from obtaining a driving license of any type during such period. Construing the above quoted provision is obvious that it couched in mandatory terms, see

section 53(2) of the Interpretation of Laws Act [Cap. 1 R.E 2002] which provides thus: "Where in a written law the word "shall" is used in conferring a functionf such word shall be interpreted to mean that the function so conferred must be performed". Specific concern is on the trial court's exercise its discretion on the proviso under section 27 (1) (a) which reads thus: "Unless the court for special reasons think fit to order a shorter period of cancellation or suspension of that person's driving licence and to order him to be disqualified from obtaining a driving license for a shorter period or not to order him to be disqualified." I invited the parties to address the court. Ms. Amina Mawoko, State Attorney who appeared for Republic was of the view that the trial court proceeded properly because section 27 (1) (a) does not state expressly that the court should address the accused to show special reasons to the court for the court to reduce the period of cancellation. On the other hand, Mr. Merkioli Mpangala, the accused's counsel admitted that there is no specific provision in the Road Traffic which requires the magistrate to address the accused person, however the proviso to section 27 (1) (a) requires the magistrate to show special reasons so he can depart from the requirements of section 27(1) (1). He argued that the nature of the provision requires the magistrate to address to the accused. There is no dispute that the court has discretion to reduce the period of license cancellation where there are special reasons to do so. It is apparent on the record that the court did give reasons which it considered to be special in the sentence. It is my view that mitigation factors and other factors saves as far as sentencing is concerned. The court is duty bound to address the accused if he has any special reason which will justify the court not to cancel his/her driving license as an exception to mandatory requirements of s. 27(1) (a). The court is duty bound to have a judicious consideration and make a sound decision whether the reasons so advanced are special reasons relating to the offence or not. It is only when the court finds that the assigned reasons are special reasons relating to the offence that it can exercise its discretion not to cancel the license for a period of three years; otherwise the cancellation is mandatory. The law mandates the court to cancel the for a period of three years therefore is not court's duty to gather reasons, pick and choose for the accused to justify the failure to act within the ambit of the requirement of the law; rather the court has to make decision basing on the reasons advanced by the accused in relation to the facts of the case. If the courts were to be left to make decisions whether to cancel the license or not their own without considering if the accused has any special reason for reduction of the period of cancellation, the mandatory requirement under section 27 (1)

- (a) would be redundant. That means, the accused has to be granted an opportunity to show special reasons before the court makes the order. I would like to emphasize that special reasons have to be conspicuously shown in the proceedings and the consequent order of cancellation showing reasons for reduction of period if any. To echo what I indicated earlier in this ruling, mitigation factors helps the court only in deciding the sentence. In the same line of reasoning, sentence must not be mixed up with cancellation order. A separate decision has to be made whether there are special for reduction of period of cancellation of license or not to cancel the license at all. It is worth noting here that in construing the law

the court should aim at reaching at making just informed decisions. The practice which the discretion under the proviso to section 27(1) (a) calls for; accused should show special reasons which would be the basis for the court to make a sound and transparent decision justifying departure from the mandatory requirement. This will give justification for each case to be decided in accordance with the facts and material presented before the court. For the aforesaid, I find that the court proceeded irregularly for not addressing the accused if there are special reasons for the court to decide not to cancel his driving license as per section 27 (1) (a) and for treating cancellation order as part of the sentence. That said I quash the sentence and all orders made consequent thereto. I order that file should be remitted to the District court immediately and proceed with sentencing, and procedure for cancellation of driving license. I further order that the case should be heard by a different magistrate with competent jurisdiction. Orders accordingly. Right of Appeal is explained.

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