

TANZANIA / JUDGMENT

19710429 TZHC Mwanza

COURT
TZHCDECIDED
29 April 1971

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4• - - - - \$' - 4 - k i-i- c----- IN THE HIGH COURT OF TANANTA AT l'ANZA. Appellate Jurisdiction. CRThNAL APPEAL N00583 OF 1970.- Original Criminal Case No521 of 1970 of the District Court of Tabora District at Tab.ora Before B.PYoshi Eso., Resident Magistrate. K.G. NAIR. • APPELLA1\1T(Original Accuse -versus- THE REPUBLIC. IRESPONDEI\1T(Orig. Prosecuto: JIJDGMEI\Tf, M\TZAVAS, Ag,J. The appellant was, on his own plea of guilty 9 convicted of four counts of traffic offences and sentenced to a total of shs.700/- fine. He has now appealed to this Court against the sentences imposed, The four offences were: - 3 • - Driving a vehicle on the public road with defective t.yres c/s 30(1) and 69 of the Traffic Ordinance 9 Ca. 168 of the Laws. On this count he was sentenced to a fine of shs.150/- or one month imprisonment in default. 2nd Count - Driving a motor vehicle on the public road with defective steering c/s 43(d) and 70 of the Traffic Ordinance. He was sentenced to a fine of shs.200/- or 3 montha imprisonment in default. 3rd Count - Driving a motor vehicle on the public road with defective brakes c/s 43(a) and. 70 of the Traffic Ordinance. Here he was sentenced to a fine of shs.200/- or 3 months imprison- ment in default. 4th Count - Driving a motor vehicle on the public road without being in good mechanical repair c/s 49 and 69 of the same Ordinance. He was sentenced to a fine of shs.150/- or one month imprisonment in default. The learned State Attorney argued that in sentencing . the accused the trial magistrate should have taken into account the total amount of fine which the accused should pay and fine \e accusAd in each of the four counts in such a way that the \ èsiré total fine is reached. According to the State Attorney, although the fines imposed cannot be said to be manifestly excessive when viewed at separately, the totalit,r of the fine 9 is according to the Republic, excessive. Looking at the offences to which the accused pleaded guilty, I 'would say that the offences are not the tyoe of traffic offences that could be termed as trivial. In the second count be pleaded guilty to driving his car with defective steering.. I -2- Mechanical inspection showed that the steering rod as well as the steering column were worn out and loose, The third count shows that his foot brake was not working efficiently. The hand-brake was not working at all. These two offences are clearly serious traffic offeces, A motor ye i cle moving on the in.iblic road with such defects is undoubtedly a great danger to the public. These two offences alone could 9 in my view, have attracted a total fine of between shs.LOO/_ and shs,500/-. The remaining two counts, that of driving with defective tyres and without the car being in good .mechanicaii:repair (counts I and Iv) are less serious and should. usually be looked at less seriously compared to the first two counts (counts II & III). In the present case the trial magistrate did award lesser fines to these offences than the fines he awarded in S. counts II & III,

The difference is, however, not big and hence the total fine of shs.700/-. In my view where an accused is convicted of several offences, all of which qualify for a fine, as is almost always the case with traffic offences, the court should in sentencing the accused first decide what should be the total amount of fine taking into account the seriousness of the offences on each count and then apportion the total fine to each of the counts according to the gravity of each offence. In this case the Republic has argued that the total fine of shs,700/- is manifestly excessive. I agree that the total sentence is excessive but the question is whether it is so manifestly excessive as to be unsustainable, on this question I would say that the sentence though excessive is not so manifestly excessive as to require interference by this court. In the event the appeal against sentence is dismissed. Delivered in Court at 3, Mtanga this 29th April, 1971. (N. AVAS" ACTING Attorney General for the Republic. Appellant - absent and unrepresented.

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