

TANZANIA / JUDGMENT

# republic vs hassan buyogera george 2020 tzhc 534 4 march 2020

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TZHCDECIDED  
4 March 2020

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IN THE HIGH COURT OF TANZANIA AT SONGEA CRIMINAL REVISION NO. 10 OF 2019  
(Originating from Songea District Court Traffic Case No. 43/2019) THE  
REPUBLIC..... ORIGINAL PROSECUTOR VERSUS HASSAN BUYOGERA  
GEORGE.....ORIGINAL ACCUSED

## RULING

Date of Last order: 19/02/2020 Date of Ruling: 04/03/2020 BEFORE: S. C. Moshi, 3 : The revision has been opened by the court on its motion to rectify the irregularities which were occasioned by the trial court for its failure to consider section 27 (1) (a) of the Road Traffic Act [Cap. 168 R.E.2002]. I invited the parties to address the court before making a decision. Factual background: The accused was arraigned before the district court of Songea at Songea on two charges one, causing death through careless driving contrary to section 41, 63 (2) (b) and 27 (1) (a) of the Road Traffic Act, Cap. 168 R.E. 2002. Two, Driving a motor vehicle without a driving Insurance Policy contrary to section 4 (1) and

- (2) of the Motor Vehicle Insurance Act, Cap. 169 R.E. 2002. The accused pleaded guilty to both counts hence he was convicted accordingly. He was sentenced to pay a fine of Tshs. 50,000/ or to serve a period of two months in prison in default for the first count and to pay a fine of Tshs. 50,000/ or to serve a term of two months in prison in default for a second count. Thereafter the court ordered a suspension of license for a period of six months. At the hearing the Republic was represented by Mr. Shaban Mwegole whereas the accused appeared in person. Mr. Shabani submitted among other things that, section 27(1)(a) of the Road Traffic Act requires that the accused who is convicted under section 41 his license should be cancelled for a period of not less than 3 years. However the court ordered a cancellation of license for a period not less than six months. He said that, the reasons for reduction of period of cancelled may be seen in the mitigation, in the mitigation the accused indicated that he has a family and he's an employee; however it is not shown in the decision. The court may under section 373 of C.P.A revise the proceedings to enhance the sentence. On his part the accused said that, it was deceased's fault as he moved from one side of the road and knocked on one side of his car however the police decided to open the case. He pleaded guilty to the charge. 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 o f

- (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. The court may reduce the period of cancellation only where special reasons have been shown, it reads "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." It is obvious that the trial magistrate did not comply with the mandatory requirement which requires the court to cancel the license for a period on not less than three years. Significantly, there is no indication on the record that the trial magistrate considered special reasons before handing down a license cancellation order for a lesser period of six months. She did not assign any reason whatsoever for reducing the period for cancellation. The irregularity has been repeatedly occasioned by subordinate courts. I again remind the subordinate courts to observe the law. Time and again I have reminded the trial magistrates to consider if there are special reasons which will warrant reduction the period. In order to make a judicious decision the accused person should be asked if there are special reasons which will warrant him a shorter period of license cancellation. The same should be apparent on the record. I with respect differ with the State Attorney as far as mitigation is concerned. Mitigation factors are relevant as far as the sentence is concerned. An order regarding cancellation of license is a different order which has to be made separately. That said, I find that the trial court erred. Consequently I quash the cancellation order. I order that the case file be remitted to the district court so it can make an order in accordance with the law. I further order that the file be placed before a different magistrate with competent jurisdiction. It is so ordered. Right of Appeal is Explained.

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