

TANZANIA / JUDGMENT

martin so pakoni vs republic

2005 tzhc 260 15 july 2005

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TZHCDECIDED
15 July 2005

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- In the high court of Tanzania AT MWANZA APPELLATE JURISDICTION HIGH COURT CRIMINAL APPEAL NO. 21 OF 2005 ORIGINAL CRIMINAL CASE NO. 20 OF 2001 OF DISTRICT COURT OF MUSOMA DISTRICT AT MUSOMA (Before D. M. F. KAMALAMO District Magistrate) MARTIN s/o PAKONI..... APPELLANT
Versus THE REPUBLIC.....RESPONDENT 13/6/2005 & 15/7/2005

JUDGMENT

R. M. RWEYEMAMU. JUDGE: Martin s/o Pakoni was arraigned on a charge with 22 counts. The first six counts were of causing death through dangerous driving; and count 7 to 21, of causing bodily injuries through dangerous driving contrary to section 40 (1) 27 (1) (c) and 63 (2)a of the Road Traffic Act as amended by Act 16/96. The last count was use of goods motor vehicle to carry passengers without public carriers' License, contrary to section 32 of the Transport License Act, 1/73. He was convicted and sentenced to 3 years each on count 1-21, and on the last count he was sentenced pay fine 100,000/= or one year imprisonment. He was further ordered to pay compensation in the total sum of Tshs. 210,000/= being Shs. 10,000 for each of the victims and his license cancelled for a period of 3 years. Dissatisfied with conviction and sentence, he has appealed to this court. The Republic, represented on appeal by Mr. Kiria State Attorney supported both conviction and sentence. In response to ground one and two of the appellants memorandum of appeal that there was insufficient grounds to support a finding of dangerous driving, the republic submitted two reasons for supporting conviction. One, that the appellant's vehicle was not licensed to carry passengers. The appellant knew that but disregarded it. This fact was indeed on the evidence uncontroversial. Two, that although the accident occurred due to tire bust, there was evidence the driver failed to control the vehicle resulting in an accident causing fatalities described in the 21 counts, because it was at the time being driven at high speed. I agree with the Republic's conclusion that such speed is evidence of reckless driving. Two, regarding the other major ground of appeal that the trial court failed to consider mitigation, the learned state attorney pointed to page 6 of the Trial court Judgment. The contents show clearly that the court considered mitigating circumstances but still found the sentence passed appropriate for reasons described. I can not fault the trial court's use of discretion in passing sentence. The appellant

carried passengers in aj vehicle not licensed to carry them, and then chose to drive the goods vehicle with passengers' in it at high speed. This was indeed a reckless disregard i 2 by the appellant of the consequences of his actions which rightly attracted the sentence it did. I agree with Republic, this appeal has no merit respecting conviction or sentence. It is accordingly dismissed. R. M. RWEYEMAMU JUDGE 15/7/2005

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