

TANZANIA / JUDGMENT

20110815 TZHC Dar es Salaam

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TZHCDECIDED
15 August 2011

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f IN THE HIGH COURT OF TANZANIA AT.DAR ES SALAAM CRIMINAL APPEAL CASE NO. 47 OF 2011 (Appeal from Traffic(, Case No. 256 of 2011 in the District Court of Temeke) MUDATHIR PEREIRA V. REPUBLIC Date of last order : 20/6/2011 Date of Judgment : 15/8/2011

JUDGMENT

Shangwa, J. This appeal arises from Traffic Case No. 256 of 2011 filed in the District Court of Temeke. It is an appeal against 1 sentence only. The Appellant Mudathir Pereira was charged with causing bodily injury through careless driving C / S 41 of the Road Traffic Act Cap. 168 R.E. 2002 read together with S. 63 (2) (b) of the same Act. He was convicted on his own plea of guilty and sentenced to six months term of imprisonment. His appeal is based on the following major ground:- " That the trial Magistrate erred in law and fact by misusing court discretion empowered to him by law by committing the accused person in prison without affording him to pay the fine to the offence which he pleaded guilty as an alternative according to the law governing the instant offence." In sentencing the Appellant, the trial Magistrate observed as follows and I quote:- 2 ,, " Despite the fact that the accused is a first offender his demeanour in a court is uncalled for. It is as if he is promised that everything will be alright or that he does not at all regret to have committed the offence. This to me is an indication of seeing the court as a normal play ground. I do not opt for the option of fine and in order to instill some sense of respect to the court by the accused he is to serve a sentence of six months in jail let this be a lesson to him and others of the same genre. It is so ordered. Signed Hon. K. S. Mkwawa, RM 14/4/2011 I have carefully examined the trial Magistrate's observation in sentencing the Appellant and found that he took into consideration irrelevant facts. For instance, 3 instead of taking into consideration the fact that the Appellant is a first offender, he took into consideration his demeanour when he appeared before him which he found as bad as being disrespectful to the court. He did not give any particulars of how disrespectful the Appellant was to court. Normally, where a person shows disrespect to the court, the action to be taken against him is to charge him with contempt of court. The trial Magistrate did not find any sense in taking such action against the Appellant. Instead of doing so, he angrily imposed a jail sentence on him without giving him an option to pay the fine as the law provides. The Appellant was convicted under S. 41 of the Road Traffic Act Cap 168 R. E. 2002. He was convicted of the offence of causing bodily injury through careless driving under the aforesaid section. The sentence which 4 has to be imposed on any person who commits such offence is provided under S. 63 (2) (b) of the Act which provides inter - alia that any

person who is convicted of an offence under S. 41 of the Act, he shall be liable to a fine of not less than fifteen thousand shillings but not exceeding fifty thousand shillings or to a term of imprisonment of not less than two years but not exceeding five years. Under the proviso to S. 63 (2) (b) of the Ac~, it is provided that in the case of a conviction for an offence under S. 41 where only bodily injury was caused and such injury did not amount to grievous harm within the meaning of that expression in the Penal Code, the person convicted of the offence shall be liable to a fine of not less than ten thousand shillings but not exceeding thirty thousand shillings or to a term of imprisonment of not less than twelve months but not exceeding five years. 5 That being the position of law concerning the sentence which the court is empowered to impose upon conviction of an offence under S. 41 of the Act, the learned State Attorney, Mr. Mwakanyamale did not support the sentence which was imposed on the Appellant by the trial Magistrate without giving him an option to pay the fine. Mr. Mwakanyamale referred this court to the case of Rukataria V. R. [1971] HCD 39 in which it was held that: " Where the section which creates an offence specifically empowers the court to levy a fine as an alternative to prison sentence the court should not normally impose a prison sentence unless the circumstances of the case warrant it." 6 In this particular case, there were no circumstances which would have warranted a prison sentence instead of a fine. I hold therefore that the sentence which was imposed on the Appellant was bad in law. For this reason, I set it aside. When the Appellant was granted bail by this court pending appeal on 21st April, 2011, he had already served seven days in prison. As there is no compensation for the period he spent in prison at Keko, I will not make any order as to how much fine he should pay. Thus, in the end, I allow his appeal. ~ A.Shangwa JUDGE 15/8/2011 7

Delivered in open court this 15 th day of August, 2011 in the presence of the Appellant and Mr. Mwakanyamale, State Attorney for the Respondent. ~ A.Shangwa J"-UDGE 15/8/2011 8

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