

UGANDA / JUDGMENT

Abdul v Uganda (Criminal Revision 25 of 1991) [1991] UGHC 53 (3 April 1991)

[1991] UGHC 53

COURT

High Court of Uganda

BEFORE

GM OKELLO, J

CASE / FILE NUMBER

Criminal Revision 25 of 1991

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The Hon Mr. Justice F. M. S Enganda-Ntende

THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KANPALA CRIMINAL REVISION ORDER NO. 25/91

ABDUL LOSES : ::::::::::::::::::::::::::::::

VERSUS

UGANDA : :::::::::::::::::::::::::::::: BEFORE: The Hon. Mr. Justice G. M. Okello:

REVISION ORDER:

. The accused in this case was charged with and convicted on his own plea of guilty on three counts of offences under the Traffic and Road Safety Act 1970. He was subsequently sentenced to a fine of Shs. 3000/= or to six weeks imprisonment in default of payment of the fine in counts 1 and 2. In count 3, he was sentenced to a fine \$2000/\$ = or to 4 weeks imprisonment in default of payment of the fine.

The Chief Magistrate of the area forwarded the record of the proceedings to this court under section 340(2) of the Criminal Procedure Code for a possible Revision Order. He was of the view that the plea in each count was equivocal and that the resultant convictions were bad.

The Learned Chief Magistrate : was further of the view that the default sentences were illegal.

The accused was charged in count 1 with Passing un-registered Motor Vehicle CPS 8 and S.52(1)(a) of the Traffic and Road Safety Act 1970. In count 2, he was charged with using on a road a motor vehicle which is not licensed C/s 13 and 185(1) of the Traffic and Road Safety Act 1970. In count 3 he was charged with using a motor vehicle for carriage of Passengers or Goods for hire or reward without a licence S.114(1)(a) of the Traffic and Road Safety Act 1970.

The pleas on which the accused was convicted were recorded in each count as "Yes" and a plea of guilty was entered in each count.

It is trite law that for a conviction to be properly based on a plea of guilty the plea must admit all the essential ingredients of the offence alleged

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and the narrated facts which must be put to the accused must also disclose the commission of the offence alleged. (See ADAH -vs- REPUBLIC (1973) EA 445) •

A ¹ Yes* plea to a charge is vague because it does not clearly admit all the essential ingredients of the offence alleged.

The narrated facts which the accused admitted the truth of d* not support the conviction in count 1. The facts reveal that the accused was found using on the road a motor vehicle of Registration Ho UXA-839 a Toyota Pick-up but there was no allegation that the above registration number was a false one and that the vehicle was in fact un registered. The facts however show that the vehicle was not licensed. This supports the charge in count 2. But the facts " *t did not go further to show that the vehicle also had no licence to carry passenger or goods for hire or reward. The vehicle was found carrying 16 passengers out it was stated that these passengers were paid passengers. With the vague plea, these vague facts cannot in my view cure the defect in the plea to support the resultant conviction in count 3.

Secondly a wrong section 114(l)(a) of the Traffic and Road Safety Act 1970 was cited in count 3. There is no section 114(1)(a) of the Traffic and Road Safety Act. There is section 114 but this section does not create an offence against using a motor vehicle for carriage of Passengers or Goods for hire or reward without licence. This section empowers the Minister to make regulation 9 under this Act. The proper section which creates an offence against use of a motor vehicle for carriage of Passengers or goods for hire or reward without licence is section 113(l)(a) of the Traffic and Road Safety Act.

But I am of the view that the citing of the wrong section here did not cause any injustice to the accused because the particulars of the offence left no doubt as to what the framers of the charge intended (Abdul RAUL. G. S. ABUR -v- R (195&) EA 126)

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As regards sentences, the offence in count ¹ calls for a fine of not exceeding Shs.2000/ = or to imprisonment of not exceeding 12 months (s.52(1)(a) of the Traffic and Road Safety Act.) .

In count 2 the penalty provided, for a fine of not exceeding Shs.1000/= (section 1⁵(1) of the Traffic and Road Safety Act). In count3, the penalty provided for is a fine of not exceeding Shs.5000/= or imprisonment of not exceeding two years. (See section 113(l)(a) of the Traffic and Road Safety Act 1970).

r. ⁴ . r ""

It is clear from the sentences imposed in each of these counts that they are illegal as they violate the relevant sections of the Traffic and Road Safety Act providing for the penalty for the relevant offences. Secondly the default sentences were also illegal as they clearly violate section 192(d) of the MCA*70 as amended by Act 4 of 19⁵

When the file was sent to the DPP for his view, Maureen Owor a state Attorney writing for the DPP was of the view that the convictions are all tad in law, because first, the pleas are equivocal, secondly that the facts do not disclose the commission of the offence alleged in count 1, Thirdly that a wrong section was cited in count 3 and fourthly tliat the default sentences contraveifj section 192 MCA870 as amended by Act 4 *f 19⁵* She did not wish to be heard in the event of a Revision order being made.

Clearly the conviction in count ¹ cannot stand because the vague plea was not cured by the narrated facts. The narrated facts are als« vague and do not disclose the commission of the offence charged. Similarly the conviction in count 3 cannot also stand. The narrated facts do not allege that the Passengers found on the vehicle were paid Passengers. In view of that vagueness the facts do not cure the vague plea. The resultant conviction is therefore bad. Both convictions are accordingly quashed and the resultant sentences in count ¹ and count 3 are set aside.

The vague 'Yes' plea in count 2 is cured by the narrated facts the truth of. which the accused admitted. The facts clearly show that the accused was found on the road using a motor velicle reg. No. IXA-839 which was not licensed in accordance with part II of the Traffice and Road Safety Act 1970* No injustice is thereby caused to the accused since he was put in picture as to what was alleged against him. The conviction is therefore proper not withstanding the vague plea.

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The sentence of a fine of Shs.3000/= is however illegal because it violates the provision section 185(1) of the Traffic and -^cad Safety Act 1970* This section provides for a penalty of a fine of not exceeding Shs 1000/=. The sentence of a fine of Shs.3000/= is therefore set aside and in its place is subsituted a fine of Shs.10/=.

The default sentence of *b* v?ecks imprisonment militates against section 192(d) of the MCA'70 amended by Act 4 of 19&5* It therefore set aside and in its place a default sentence of 7 days imprisonment in default of payment of a fine of Shs»10/= is substituted.

ORDER:

In case a fine of 3000/= was paid by the Accused in count 2 the balance of Shs.2,990/= refunded to the accused. Further any fine paid in respect of count ¹ and 3 should also be refunded to the accused forthwith.

G. M. Okello

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