

**THE STATE**

**Versus**

**SANDILE DLAMINI**

IN THE HIGH COURT OF ZIMBABWE  
DUBE-BANDA J  
BULAWAYO 26 April 2023

**Review judgment**

**DUBE-BANDA J:**

[1] This review matter came before me in terms of s 57(1) of the Magistrates' Court Act [Chapter 7:10]. The accused was charged and convicted of the crime of culpable homicide as defined in section 49 of the Criminal Law (Codification and Reform) Act, [Chapter 9:23]. It being alleged that on 19 July 2022 at around 1700 hours he negligently caused the death of three persons (deceased) in a road traffic accident. It was alleged further that he drove his motor vehicle on the wrong side of the road resulting in a head on collision with an oncoming vehicle.

[2] The accused pleaded guilty to the charge and was convicted. Nothing turns on the conviction. It is the sentence that is of concern and subject to this review judgment.

[3] He was sentenced to a \$40 000 fine or in default of payment six (6) months imprisonment, and in addition prohibited from driving any classes of motor vehicles for a period of two (2) years and his licence was cancelled.

[4] The facts of this matter are that on 19 July 2022 at about 1700 hours the accused was driving a private vehicle namely a Honda Fit Reg. No. AEL 5569 due south along Nketa Drive, Bulawayo. He had four passengers on board. Whilst at a certain spot near Flo garage, Tshabalala, the accused person drove on the opposing way and had a collision with another vehicle which was going the opposite direction. The collision resulted in both vehicles sustaining serious damages and the death of three passengers who were in the accused's vehicle.

[5] The accused was negligent in that he was traveling at an excessive speed in the circumstances; he was driving on the wrong side of the road; and he failed to stop when an accident seemed imminent. The trial court found that had he been charged in terms of the Road

Traffic Act [Chapter 13:11] he would have been convicted for contravening s 53(2) of the Act, i.e., reckless driving. I agree.

[6] To my mind, anyone who drives on the wrong side of the road and at an excessive speed and is involved in a head on collision resulting in deaths is *prima facie* reckless. In *S v Mtizwa* 1984(1) ZLR 230 HC the court said:

Our courts have long held that “recklessness in traffic cases means no more than gross or aggravated form of negligence,” and that “it is only where driving shows a complete or wilful disregard for the safety as well as the rights of other road users that it amounts to gross negligence or recklessness.”

[7] The accused’s conduct answers to recklessness as defined in the *Mtizwa* case. See: *R v Phillipson* 1957 (1) SA 114(SR). He was indeed reckless. See: *R v Chitanda* 1968 (1) RLR 47; *R v Greenland* 1961 R & N 738, 1962 (1) SA 51.

[8] Driving on the incorrect side of the road is serious. In *S v Mtizwa* 1984(1) ZLR 230 HC the court said in modern society, when motor vehicles in great numbers are on our roads, and their drivers are travelling at some speed in going about their ordinary affairs, it is of vital necessity that all road users strictly comply with the rules of the road. The court underscored the importance of driving on the correct side of the road.

[9] During the canvassing of essential elements the accused confirmed that he was driving at an excessive speed in the circumstances and on the opposing lane. He said he could not remember the time the collision occurred, but it was in the evening, and visibility was still good. There was heavy traffic on the road. He had four passengers in his vehicle and three died as a result of the collision which he caused.

[10] The accused was driving at an excessive speed and on the opposing side of the road. I take judicial notice of the fact that around 1700 hours our roads are very busy with road users heading back to their homes after a day’s work. The accused chose this time to violate one of the cardinal rules of our roads, to drive on the left side of the road, and drove towards oncoming traffic. He had a head-on collision with a vehicle which was on its correct side of the road, this resulted in the deaths of three passengers. The accused showed a complete disregard for the safety as well as the right of other road-users. It was in sentencing that the trial court should have ensured that the accused was appropriately held accountable for this conduct.

[11] In the circumstances of this case a sentence of a fine amounts to a travesty of justice. It is disturbingly inappropriate. It does not instil confidence in the administration of criminal justice. In view of the current increase in the number of tragedies on our roads, such conduct warrants a prison sentence. In *S v Dzvatu* 1984 (1) ZLR 136 the court said in citing *S v Lusenge* AD 138/81 that such conduct has always attracted a prison sentence. See: *S v Chirisa* 1989 (2) ZLR 102 (SC). In *S v Mtizwa (supra)* the accused pleaded guilty to culpable homicide. He had driven on the wrong side of the road. He struck and killed a motor cyclist. He could not explain why he had been on the incorrect side of the road, or why he had not seen the motor cyclist at any time before the accident. He was fined \$200. On review the sentence was criticised for being disturbingly lenient. It was said that an appropriate sentence would have been one of imprisonment and a prohibition from driving. It was said, among other things, that where recklessness or gross negligence is shown, a prison sentence should be appropriate. In *S v Chitepo* 2017 (1) ZLR 237 (H) the court stated that a sentence of imprisonment is appropriate for traffic culpable homicides where there was gross negligence or recklessness.

[12] The trial court over emphasised the fact that the accused suffered injuries as a result of the collision. I agree that the fact that he suffered injuries and was walking with the aid of crutches as a result of the collision could well be mitigating, but not in the circumstances of this case sufficient to spare him a prison term. Driving on the wrong lane and opposing traffic, being involved in a collision and causing the death of three people is intrinsically a very serious offence. The accused's moral blameworthiness is very high indeed. Any sentence which fails to recognise the seriousness of this crime may lead to society losing its confidence in the criminal justice system. Especially in a society where fatal road accidents have become prevalent and endemic. This is the kind of offence in respect of which a suitably deterrent sentence is necessary. The accused can consider himself extremely fortunate that he was treated with such excessive leniency.

[13] The conviction is proper and is confirmed. The sentence is disturbingly inappropriate and not accordance with the requirements of the law. It is not in accordance with real and substantial justice. In the result, I withhold my certificate.

DUBE-BANDA J: