

JESICAH TATENDA MUSARURWA  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
ZHOU & CHIKOWERO JJ  
HARARE, 19 & 22 September 2022

### **Criminal Appeal**

*K Mabhaudhi*, for the appellant  
*T Mapfuwa*, for the respondent

**ZHOU J:** This is an appeal against conviction on a charge of contravening s 52(2)(a) of the Road Traffic Act [*Chapter 13:11*] (Negligent driving). The appeal against sentence was abandoned at the hearing.

The appeal is opposed by the respondent.

The facts which were accepted as proved by the court *a quo* are as follows: that on 16 August 2021 the appellant was driving a Toyota Allion motor vehicle. She was in the outer lane. At the same time a Haulage Freight truck being driven by Panganai Kadani was in the inner lane, driving in the same direction as the appellant. The appellant, without checking, changed lanes and moved into the inner lane, thereby causing the Haulage truck to hit her motor vehicle on the rear right side. The appellant's car was hit by the front left side of the truck. There was evidence that the right side of the tail light of the appellant's motor vehicle came into contact with the haulage truck. On these facts and the evidence of the photographs and sketch plan prepared by the attending detail, the court *a quo* came to the conclusion that the accident had been caused by the negligence of the appellant as particularized in the outline of the state case.

In his notice of appeal, the appellant has advanced four grounds in seeking to overturn the conviction. Ground number four cannot qualify as a valid ground because it is very general and lacks precision. Appellant's counsel admitted that it cannot stand alone as a ground of appeal. Grounds one and two speak to the same issue of who between the appellant and the driver of the

haulage truck caused the accident. In this respect, appellant relies on two aspects of the evidence led in court. The first aspect is the fact that none of the two state witnesses saw the appellant when she changed from the outer lane to the inner lane. The second aspect is the statement by the driver of the truck that he accelerated prior to the collision.

The matter did not turn on the applicant being seen by any of the witnesses changing lanes, but on the oral evidence of the witnesses regarding what was in front of the truck before the accident, as well as the position of the motor vehicles at the time of the accident and after as described by the witnesses and depicted in the photographs which were produced in evidence. After considering the evidence of the two witnesses and the photos, the court *a quo* concluded that the evidence pointed towards the one conclusion that the appellant was the one who changed lanes. The court *a quo* specifically noted the position of the appellant's motor vehicle *vis-à-vis* the position of the truck. It also observed that the damage on the right side of the appellant's motor vehicle was consistent with her having switched from the outer lane to the inner lane.

The fact that the driver of the truck did not see the appellant's motor vehicle at the time that it changed lanes was adequately explained by Panganai Kadani the driver. Owing to the size and height of the truck, there was a blind spot, by which is meant the portion of the road that could not be seen through the mirrors. This explanation was accepted by the learned magistrate. We find no misdirection in that regard. The witness did see the omnibuses which were obstructing traffic in the outer lane, hence his explanation that the appellant must have moved into the inner lane in order to avoid those buses. Panganai Kadani also stated and he was not challenged, that after the collision he noticed that the appellant's vehicle had crossed his with its back in the outer lane.

The reference to acceleration by the witness is being taken completely out of context by the appellant and his counsel. The witness explained (Record 20) that for the vehicle to be in motion he had to accelerate. Acceleration simply means moving from lower to a higher speed, or from being in a stationary position to being in motion, by pressing on the accelerator pedal or whatever device would be there to move the motor vehicle. The court *a quo* found, correctly in our view, that the accident was caused by the change of lanes by the appellant, not by any acceleration on the part of the truck driver.

For these reasons, the first two grounds of appeal are without merit.

The third ground of appeal is that the court *a quo* erred at law by deciding that the evidence of the second witness for the state corroborated that of the first witness. Appellant submits that the second witness stated that she was unsure of her evidence. The second state witness, Apronia Mufambi, was the attending detail. The submission that she stated that she was unsure of her evidence is false. It is a misinterpretation of her testimony. Because she was not present when the accident happened she could only testify about her observations at the time that she attended the scene. Even after she had testified that she attended the scene after the accident had already occurred irrelevant questions such as “you also confirm that you did not see the accident happening?” were being asked by the appellant’s counsel. Any inferences that this witness drew from what she observed could only be her opinion. The fact that she admitted (properly) that her opinion could be wrong does not mean that she was uncertain about that which she personally observed. The issue of who was negligent or who switched lanes was the precise question for the court to decide and it was not bound by the opinion of the witnesses in that regard. The corroboration that the second witness provided to the evidence of the first witness pertained to the number of lanes, the direction of travel of the two motor vehicles, the likely point of impact, the position of the motor vehicle after the accident, the general speed limit for the area and the damage on the motor vehicles. It is therefore not correct that her evidence could not corroborate that of the first witness.

In all the circumstances, there are no grounds advanced to justify the overturning of the conviction.

In the result, the appeal is dismissed in its entirety.

CHIKOWERO ..... Agrees

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*Hove and Associates*, appellant’s legal practitioners.  
*National Prosecuting Authority*, respondent’s legal practitioners