

CHAWAONA WILBARD KANOTI
versus
THE STATE

HIGH COURT OF ZIMBABWE
HUNGWE & WAMAMBO JJ
HARARE, 20, 27 February 2018 & 20 June 2018

Criminal Appeal

D. Mukanga, for the appellant
E. Nyazamba, for the respondent

WAMAMBO J: The appellant was convicted by the Harare, Magistrate Court for contravening s 52 (2) of the Road Traffic Act [*Chapter 13:11*] (negligent driving) and on 1 July 2014 he was sentenced to \$50 in default of payment 5 days imprisonment.

He appealed only against conviction and raised seven would be grounds the summary import of which is that the informant had a motive to falsely incriminate him, that photographic evidence did not support the conviction, credibility of witnesses and non-submission of the Traffic summary by the State. The State however made a concession and it trite that we are not bound by it. We also do not agree with the concession.

The facts are that on 6 October 2013 and at corner Kirkman and Quarry roads in Harare the vehicle driven by the appellant and that driven by Chigwede James collided. The State asserted that the appellant caused the accident in that he was negligent in one or more of the following: failure to keep a proper look, following too closely and failing to act reasonably when a collision seemed imminent. The appellant on the other side asserts that he was not negligent for it was Chigwede James whose vehicle had its lights off who made a sudden u-turn in the appellant's front.

The State called Chigwede James and the investigating officer as its witnesses. The two witnesses' evidence is in tandem with the circumstances of the case and the damage on the two cars involved in the accident. Chigwede James' vehicle was hit on the rear right door while the appellant's vehicle was hit on the front left side. Such damages are inconsistent with the version given by the appellant. The damages reflect that the appellant was following too closely and

when Chigwede James' vehicle was turning right the appellant who intended to overtake him then hit Chigwede James' vehicle with the front of his vehicle.

The appellant's defence witness did not add much to the issues at hand for what it is worth the witness was specifically called by the appellant who had dropped him before the accident. He was also employed by the appellant on a part time basis.

A close reading of the record also reflects that appellant had approached the police investigating the matter in a rather intimidating manner. It is against the same police officer/s that he now raises the allegation of a motive to falsely incriminate him. On the four corners of the record there is no such evidence but rather appellant's rather intrusive manner, when he approached the police.

The finding by the court *a quo* that appellant is the cause of the accident through his negligent driving is supported by the physical damages to his car and that of Chigwede James which reflects that the appellants' car is the one which hit the other car from the back. The finding that it was at a junction and appellant attempted to overtake a vehicle turning right also supports the particulars of negligence alleged by the State. We find that the allegation by the appellant that Chigwede James' vehicle executed an illegal U-turn and caused an accident is not supported by the evidence and the probabilities, in the circumstances of this case.

The allegation about the police's improper conduct is not supported by the circumstances and the evidence that appellant rushed his vehicle to be repaired soon after the accident is rather questionable. After a full consideration of the merits and demerits of all the witnesses and the probabilities of the case we find that the trial court arrived at the correct decision to convict appellant.

In the result the appeal is dismissed in its entirety.

HUNGWE J agrees:.....

Kanoti and Partners, appellant's legal practitioner
National Prosecuting Authority, respondent's legal practitioner