

NEVER MURA
versus
THE STATE

HIGH COURT OF ZIMBABWE
HUNGWE & WAMAMBO JJ
HARARE, 11 September 2018 & 30 January 2019

Criminal Appeal

M.H Chitsanga, for the appellant
E. Mavuto, for the respondent

WAMAMBO J: The appellant was convicted of negligent driving as defined in s 52 (2) (a) of Road Traffic Act [*Chapter 13:11*] – by a magistrate sitting at Harare Magistrates Court. He was sentenced to 6 months imprisonment. In addition he was prohibited from driving motor vehicles in classes 1 to 5 for a two year period. The appeal against conviction was withdrawn at the hearing of this appeal.

On sentence appellant's grounds of appeal are summarily that the sentence was unduly harsh, and that a fine or community service should have been imposed in the circumstances of the case.

The State alleges that on 22 January 2016 at around 2000 hours, the appellant was driving a Toyota Hiace due east along, Samora Machel Avenue, Harare and he negligently proceeded against a red light and collided with a Toyota Cresta motor vehicle driving due west driven by Chrispen Musekiwa.

The accident occurred at corner Samora Machel Avenue and Rotten Row Road. After the first impact appellant swerved to the left and rammmed into a motor vehicle which was following behind the Toyota Cresta driven by Rangarirai Chinomona. The accident resulted in Chrispen Musekiwa getting injured to the extent that he incurred fractured ribs. The injuries were found to be moderate in their intensity.

The State levelled four particulars of negligence as follows:-

- appellant failed to stop or act reasonably when a collision was about to occur;

- appellant failed to obey some lawfully erected traffic sign.
- appellant failed to keep the car under control
- appellant was travelling at an excessive speed in the circumstances.

The State called three witness and the defence called two witnesses. Rangarirai Chinomona's evidence was as follows:-

He was stopped by traffic lights at Samora Machel Avenue Corner Rotten Row. He was headed West. A commuter omnibus travelling at an excessive speed had entered the intersection and hit the motor vehicle in front of him. The accident occurred in the middle of the intersection. This vehicle was damaged on the bonnet and right front fender while appellant's vehicle was damaged on the rear left side. The other vehicle also involved in the accident incurred damages to the right door. Appellant was driving a commuter omnibus and was in the company only of his conductor.

The other State witness Chrispen Musekiwa gave evidence that his motor vehicle was bumped into by the public service vehicle driven by appellant under circumstances where the traffic light was green in his (the State witness) favour.

The rest of his evidence was substantially similar to and corroborative of that of Rangarirai Chinomona.

Angeline Makoni a traffic officer testified and her evidence was to the following effect:

She attended the traffic accident in this case and observed functional traffic lights. She produced a traffic accident book and also testified to that in her view appellant proceeded against a red robot and failed to keep a proper look out.

Makoni's views are supported by the traffic accident book observations and the physical evidence of the damages on the respective vehicle and the fact that the collision took place in the middle of an intersection where there was functional traffic light directing traffic. See *R v Oldfield* 1969 (2) RLR 233 cited with approval in *Robin Smith v The State* HH 560-14.

We are of the considered view that the decision by the defence to withdraw the appeal against conviction is correct, in the light of the above highlighted circumstances.

On the grounds of appeal against the sentence the trial court responded adequately and emphasized that the appellant was driving a public service vehicle, that a fine was not appropriate considering the circumstances of the accident and that a deterrent sentence was deserved and appropriate.

Besides alleging generally that the sentence induces a sense of shock and suggesting a community service sentence no similar fact case has been cited in support of the various grounds of appeal against sentence.

The circumstances of this case are grave for the following reasons proceeding against a red robot is a serious violation of traffic laws and exposes any other road user to grave danger. In the instant case the accident resulted in two other cars being extensively damaged. One of the other drivers had to be rushed to hospital and suffered fractured ribs being injuries sustained in the traffic accident. Driving a public service vehicle carries with it a high degree of care. The trial court correctly found that the circumstances in this case reflect gross negligence on the part of the appellant. Also see *Emmanuel Korovedzai v The State* HH 178/15. *Michael Matonhodze v The State* HH 310/15.

In the circumstances as outlined above we are of the considered view that the sentence fits the crime, the offender and the interest of society and is within the confines allowed at law.

In the result we dismiss the appeals against both conviction and sentence.

HUNGWE J *agrees*:.....

Mutandiro, Chitsanga & Chitima Attorneys, appellant's legal practitioners,
National Prosecuting Authority, respondent's legal practitioners