

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

CRIMINAL REVISION NO 06 OF 2020

(Originating from Traffic Case No. 28 of 2019, of the District Court of Tunduru)

THE REPUBLIC

VERSUS

GAUDENS FILOTEUS @ MATEMBO ACCUSED

Date of last hearing: 23/03/2021

Date of delivering Order: 21/04/2021

REVISIONARY ORDER

I. ARUFANI, J.

During inspection of the fortnightly traffic returns of the month of June, 2020 of the District Court of Tunduru (hereinafter referred as the trial court) the court found the accused person was charged in Traffic Case No. 28 of 2019 with the offence of causing bodily injury through careless driving of a motor vehicle on the public road contrary to sections 41 (1) and 63 (2) (b) of the Road Traffic Act, Cap 168 R.E 2002 (hereinafter referred as the Act).

The court found further that, the accused person pleaded guilty to the offence and after being convicted he was sentenced to pay fine of

Tshs. 20,000/= or to serve six months imprisonment. The requirement to cancel driving license of an accused person convicted under the provision of the law upon which the offence leveled against the accused person was made as provided under section 27 (1) (a) of the Act was not complied with.

The stated discovery prompted the court to order the file for revision of the said matter to be opened and the original file be called from the trial court to see the propriety, regularity and correctness of the charge laid against the accused person and the decision made by the trial court. After the file for revision being opened and the original file of Traffic Case No. 28 of 2019 being brought to this court, the court perused the same and after being satisfied section 27 (1) (a) of the Act was not complied with it ordered the parties to be summoned to appear before the court to address it about the stated observation.

The accused person appeared in the court in person and the Republic was represented by Ms. Tumaini Ngiluka, learned Senior State Attorney. The State Attorney told the court that, after the trial court convicted the accused person and sentenced him to pay fine of Tshs 20,000/= and in default to serve six months imprisonment, it did not ask him to state if he

had any special reason which would have caused his driving licence not to be cancelled and not be disqualified from obtaining another driving license as required by section 27(1) (a) of the Road Traffic Act. Sequel to that his driving license was not cancelled and he was not disqualified from obtaining another driving license for a period of three years provided in the above referred provision of the law.

On his party the accused person prayed the court not to cancel his driving licence and stated that, he did not drive his motor vehicle carelessly and said he followed the road safety procedure properly. He stated further that, he did not knock the complainant's motor vehicle and said his vehicle overturned itself. He stated furthermore that, when the accident occurred, he was taking care of his sick mother.

After getting the submissions from both sides and when the court was preparing the decision of the court it discovered that, although it was stated in the fortnightly traffic return of the trial court of month of June, 2020 that the accused person was charged with the offence of causing bodily injury through careless driving of a motor vehicle on the public road contrary to section 41 (1) and 63 (2) (b) of the Act but the charge sheet laid against the accused person shows he was charged with the offence of

causing accident through careless driving of a motor vehicle on the public road contrary to the provisions of the law cited above.

The court found there is nowhere in the record of the trial court indicated the charge sheet filed in the trial court was amended to show he was charged with the offence indicated in the fortnightly traffic returns of the trial court inspected by the court. After making the above stated discovery the court required the parties to address it about the same. The State Attorney told the court that, that being the position, and as the court has power to revise the proceedings and the decision made by the trial court then, the court use the said power to quash the proceedings and the decision made by the trial court and set the accused person at liberty. On his side the accused person being a lay person had nothing to tell the court.

After taking into considering what was stated to the court by the State Attorney and the response made thereto by the accused person the court has found proper to start with the propriety of the charge leveled against the accused person before going to the first observation relating to none compliance with section 27 (1) (a) of the Act. The court has found that, first of all there is no section 41 (1) in the Act which was used to

charge the accused person with the offence of causing accident through careless driving of a motor vehicle on the public road and secondly there is no offence of causing accident through careless driving of a motor vehicle on the public road provided in any provisions of the Act

To the contrary the court has found there is section 41 in the Act which has no any subsection and the offence provided under that provision of the law is not the offence of causing accident through careless driving of a motor vehicle on the public road laid against the accused. The offence provided under section 41 of the Act is the offence of causing bodily injury or death to any person by carelessly using of a motor vehicle or trailer. For clarity purpose the cited section 41 of the Act states as follows:-

"Any person who causes bodily injury to or the death of any person by carelessly using a motor vehicle or trailer shall be guilty of an offence."

That being what is provided under section 41 of the Act the court has found it is also pertinent for clarity purpose to reproduce in this order the offence laid against the accused person as appearing in the charge sheet. It states as follows:-

"STATEMENT OF OFFENCE: Causing Accident through careless driving of a motor vehicle on the public road c/s 41 (1) and 63 (2) (b) of the Road Traffic Act, Cap 168 R.E 2002."

The above quoted statement of the offence shows the accused person was charged with the offence of causing accident through careless driving of a motor vehicle on the public road and not the offence of causing bodily injury to or death of any person through careless driving of a motor vehicle on the public road as provided under section 41 of the Act. Since there is no section 41 (1) in the Act which was used to arraign the accused person before the trial court, the court has found it is not only that the accused person was charged under none existing provision of the law but the offence of causing accident through careless driving of a motor vehicle on the public road laid against him is not provided in any provision of the Act.

This shows the accused person was charged and pleaded guilty to an offence made under a provision of the law which is not in existence. The effect of the said defects is to render the plea of the accused person to the charge laid against him to be equivocal. The above finding of this court is getting support from the holding made in the case of **R. V. Karim Taibale**

[1985] TLR 196 where the accused person pleaded guilty to a charge which was made under wrong as well as non-existent provisions of the law and the court held in that:-

"The charge was so fundamentally defective that the accused could as well have been admitting different offences in the same count and his plea cannot be taken to have been unequivocal."

It is in the light of the position of the law stated in the above cited case the court has arrived to the settled view that, as the accused person was charged under non-existent provision of the law and under the offence which is not known to the law it cannot be said he was fairly convicted on his own plea of guilty in the offence laid against him. As the accused person was convicted under none existing provision of the law and under the offence not provided under the law even the sentence imposed to him was unlawful as a proper sentence is required to stem from the proper conviction. That was stated by the Court of Appeal of Tanzania in the case of **Joseph Mahona V. R**, Criminal Appeal No. 541 of 2015, CAT at Tabora (unreported) where it was held that, any lawful sentence must be preceded by a proper conviction.

In the strength of the reasons stated hereinabove the court has found the conviction entered against the accused person and the sentence imposed to him cannot be left unaltered. Consequently, the proceedings of the trial court and the conviction entered against the accused person on his own plea of guilty are hereby quashed and the sentence to pay fine of Tshs. 20,000/= imposed to him is set aside. The court is ordering the fine paid by the accused person to be refunded to him. It is so ordered.

Dated at Songea this 21st day of April, 2021


I. ARUFANI

JUDGE

21/04/2021



Court:

Revisionary order delivered today 21st day of April, 2021 in the presence of the accused in person and in the presence of Ms. Tumaini Ngiluka, Senior State Attorney for the Republic. Right of Appeal to the Court of Appeal is fully explained.


I. ARUFANI

JUDGE

21/04/2021

