

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

CRIMINAL REVISION NO. 07 OF 2020

(Originating from Traffic Case No. 49 of 2019, of the District Court of Tunduru)

THE REPUBLIC

VERSUS

AMANDUOS AMANDUOS @ NGURUE ACCUSED

Date of last hearing: 23/06/2021

Date of delivering Order: 23/06/2021

REVISIONARY ORDER

I. ARUFANI, J.

This revision proceeding was initiated by the court *suo moto* under section 372 of the Criminal Procedure Act, Cap 20 R.E 2019 (the Criminal Procedure Act) after inspecting the fortnightly traffic returns of the month of June, 2020 of the District Court of Tunduru (the trial court) and entertained doubt that there is non-compliance of some requirements of the law. The court initiated the revision after seeing the accused person was charged in Traffic Case No. 49 of 2019 of the trial court with the offence of causing bodily injury through careless driving of a motor vehicle

on a public road contrary to sections 41, 27 (1) (a) and 63 (2) (b) of the Road Traffic Act, Cap 168 R.E 2002 (the Road Traffic Act).

The court found further that, after being stated the accused person had pleaded guilty to the offence, he was convicted and sentenced to pay fine of fifty thousand shillings and in default to serve six months imprisonment. The court found the sentence imposed to the accused person was not the one provided under the law cited in his charge and the requirement to cancel his driving license as provided under section 27 (1) (a) of the Road Traffic Act was not complied with.

The stated discovery prompted the court to order the file for revision of the said case be opened and the original file be called from the trial court to see the propriety, regularity and correctness of the proceedings, decision and sentence imposed to the accused person by the trial court. After the file for revision being opened and the original file of Traffic Case No. 49 of 2019 being brought to this court, the court perused the same and found there are so many irregularities and the decision made by the trial court is not in accordance with the requirements of some laws.

Having arrived to the above observations the court ordered the parties to be summoned to address it about the stated observations. The effort to get the accused person to appear before the court proved futile and the court decided to proceed with the matter by getting the view of the Republic about the irregularities observed by the court in the mentioned case.

The Republic was represented by Mr. Emmanuel Barigila, learned State Attorney who informed the court that, after going through the record of the trial court he has seeing the accused person was properly convicted on his own plea of guilty. He however said the errors appearing in the record of the trial court is in relation to the custodial sentence imposed to the accused person in case he would have default to pay the fine which he stated is not proper and said the licence of the accused person was not cancelled as required by section 27 (1) (a) of the Road Traffic Act.

When the court probed him to look properly the proceedings of the trial court and told the court whether the accused pleaded guilty to the offence he was facing and whether he was convicted in accordance with the law he changed his stance. He told the court that, he has seen the plea of the accused person to the offence he was facing is not recorded in the

proceedings of the trial court in his own words and in lieu thereof it is the trial magistrate who recorded the accused person changed his plea of not guilty into plea of guilty.

He stated further that, the conviction entered against the accused person was not proper as it was not stated he was convicted under which provision of the law and said the sentence imposed to him was not proper. In fine he prayed the court to nullify the proceedings of the trial court, the conviction entered against the accused be quashed and the sentence imposed to him be set aside. He also prayed the court to order the matter to be tried de novo.

After getting the view of the learned State Attorney the court find the proceedings of the trial court shows that, when the charge was read to the accused person for the first time on 16th December, 2019 he pleaded not guilty to the charge read to him and his plea of not guilty was entered. When the case came for preliminary hearing on 1st June, 2020 the trial court' magistrate recorded in the proceedings of the trial court that, the accused was reminded his charge and changed his plea of not guilty to plea of guilty and the court entered plea of guilty.

The court has found that, as rightly stated by the learned State Attorney there is nowhere the words of the accused showing he changed his plea of not guilty to guilty were recorded. That is contrary to the requirement of recording the words of an accused person who has showing is pleading guilty to an offence set in a celebrated famous case of **Adan V. R**, [1973] EA 445 where it was stated inter alia that:-

- (i) *"The charge and all the ingredients of the offence should be explained to the accused in his language or in a language he understands.*
- (ii) ***The accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded"***. [Emphasis added].

Since there is nowhere in the proceedings of the trial court recorded the charge and all the ingredients of the offence were explained to the accused person in his language and as there is nowhere the accused person's own words in relation to the change of his plea were recorded it cannot be said the accused person pleaded guilty to the offence he was facing. The act of the learned trial magistrate to record the accused person changed his plea of not guilty into plea of guilty without recording what was said by the accused person on his own words in relation to the said

changes is an irregularity which affected the alleged plea of guilty entered against the accused person.

The court has found further that, even the conviction entered against the accused person after the alleged plea of guilty was not properly entered. The court has found as rightly stated by the learned State Attorney the learned trial magistrate recorded in the proceedings of the trial court that, the accused was convicted on his own plea of guilty without stating he was convicted under which section of which law as required by section 312 (2) of the Criminal Procedure Act which states as follows:-

"In the case of conviction the judgment shall specify the offence of which, and the section of the Penal Code or other law under which, the accused person is convicted and the punishment to which he is sentenced."

Since it was not stated the accused person was convicted under which section of which law it is crystal clear that the accused person was not properly convicted as required by the provision of the law quoted hereinabove. The effect of entering conviction contrary to the above quoted provision of the law was deliberated in the case of **Elia John V. R,**

Criminal Appeal No. 269 of 2011, CAT at Arusha (unreported) and stated that, failure by the trial court to comply with the mandatory provision of section 312 (2) of the Criminal Procedure Act, renders the conviction incurably defective.

Besides, the court has found the sentence imposed to the accused person was not in accordance with the law upon which the offence laid against him was made. The court has arrived to the above finding after seeing the accused person was charged and convicted in the offence of causing bodily injury through careless driving of a motor vehicle on a public road contrary to section 41 of the Road Traffic Act.

The punishment for a person convicted of the offence provided in the said provision of the law where it is only bodily injury caused and not a grievous harm is provided under the proviso to section 63 (2) (b) of the Road Traffic Act which was also cited in the charge laid against the accused person. The punishment provided under the cited provision of the law is a fine of not less than ten thousand shillings but not exceeding thirty thousand shillings or to a term of imprisonment of not less than twelve months but not exceeding five years.

That being the punishment which was supposed to be imposed to the accused person if it would have been found he was properly convicted the court has found the sentence of paying fine of fifty thousand shillings and in default to serve six months imprisonment was unlawful sentence as is not in compliance with the law cited hereinabove. All of what I have stated hereinabove caused the court to find it is not only that the plea of guilty alleged was made by the accused was not properly procured but even conviction entered against him and the sentence imposed to him was unlawful.

Consequently, and as prayed by the learned State Attorney the proceedings of the trial court is hereby revised and nullified, the conviction entered against the accused person is quashed and the sentence imposed to him is accordingly set aside. The court is ordering the fine paid by the accused person be refunded to him and the case be tried de novo before another magistrate with competent jurisdiction. Order accordingly.

Dated at Songea this 23rd day of June, 2021



I. ARUFANI

JUDGE

23/06/2021



Court:

Revisionary order delivered today 23rd day of June, 2021 in the presence of Mr. Emmanuel Barigila, learned State Attorney for the Republic. Right of Appeal to the Court of Appeal is fully explained.


I. ARUFANI
JUDGE
23/06/2021

