

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CRIMINAL APPEAL NO. 259 OF 2021**

(Originating from Traffic Case No. 92 of 2021 of Kigamboni District Court, at Kigamboni before Hon. Josiah K.I -RM)

CYRILO CHARLES IHARE..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of last Order: 18/07/2022

Date of Ruling: 22/07/2022

On 8/12/2021, the appellant named above was convicted on his own plea of guilty by the District Court of Kigamboni at Kigamboni of the offence of Careless Driving; Contrary to section 41, 63(2) (b) and 27 (1) (a) of the Road Traffic Act, [Cap 168 R.E 2002]. He was thereafter sentenced to a fine of 20,000/= or save two months imprisonment in default and his licence was also cancelled for a period of 3 years. Dissatisfied with the sentence, appellant has preferred the present appeal equipped with two grounds of appeal going thus:

- (a) That the sentence is unreasonably excessive

- (b) That the trial magistrate erred in law and fact by failing to consider appellants mitigation factors without giving any reasons thereof.

On the basis of the above grounds, the appellant prayed this Court to allow the appeal, quash and set aside the sentence and release to him the driving licence unconditionally, costs and any other reliefs as the court may deem fit and just to grant. The appeal was heard viva voce on 12/07/2022 where appellant appeared in person unrepresented, while the respondent represented by Mr. Kisima, the learned state attorney. Parties submitted on the grounds of appeal though for the reasons which will be apparent soon, I am not intending to reproduce their submission.

Having perused the lower court records including the charge sheet in which the appellant pleaded to before he was convicted on plea of guilty, this Court suo motu raised an issue as to whether the plea which resulted into appellant's conviction and finally the sentence in which he is challenging was unequivocal. To respond to that issue parties were on 18/07/2022 summoned to appear and address the court in respect of the legality of conviction and sentence imposed to the appellant. It was Mr Kisima who addressed the court first. He said having revisited the charge in which the appellant's own plea of guilty was drawn before he was convicted and

sentence noted that, the same is defective as the ingredients of offence of creating the offence Careless Driving under section 41 of the Road Traffic Act, are not reflected in the particulars of the offence that were read and explained to the accused person before he entered his plea. He went on submitting that, appellant was charged with section 41, 63 (b) and 27(1) (a) of the Road Traffic Act [Cap168 R.E 2002], in which section 41 of the Act, refers to acts of driving the motor vehicle recklessly or negligently resulting into death or grievous harm. According to him, in the present appeal the charge sheet discloses that, the reckless driving by the appellant resulted into damage of motor vehicle and road edges. In his view, the section invoked in the charge differs materially with the particulars of the offence read and explained to the appellant therefore the appellant plea was equivocal. As such he confessed that, the appellant was not clear as to what he actually pleaded to between the offence he was charged with and the particulars read over to him. On the effect of such anomaly and the remedy thereto, he said the anomaly rendered the appellant's plea equivocal. As to the remedy he submitted that, this court should direct itself to the prayers sought by the appellant in the memorandum of appeal which are to allow the appeal and restore the driving licence to the appellant. In his part,

appellant being a lay person had nothing to submit rather than praying the court to allow the appeal.

Having heard the submission of the learned State Attorney and revisited the lower court records, it is uncontroverted fact to this Court that, the charge in which the appellant pleaded to is wanting in material terms. It is settled principle that, charge is a foundation of a criminal trial thus, any court admitting it from the prosecution should satisfy itself that it is drawn in compliance with the law. Understanding the importance of the charge, the law under section 132 of the Criminal Procedure Act, [Cap. 20 R.E 2019] (the CPA) gives direction on how it should be drawn together with its contents. Section 132 of CPA which is relevant here provides thus:

Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.

Similarly, section 135 (a) (ii) of the CPA provides for the contents of the statement of offence and it reads: -

The statement of offence shall describe the offence shortly in ordinary language avoiding as far as possible the use of technical terms and without necessarily stating all the essential elements of the offence and, if the offence charged is one created by enactment, shall contain a reference to the section of the enactment creating the offence.

The emphasis in section 132 of the CPA is that, it provides for a requirement of the offence with which the accused person is charged with to be specified in the charge or information together with such particulars as may be necessary for providing him with reasonable information regarding the nature of the offence. See the case of **Mussa Mwaikunda v. Republic [2006] TLR 387**. In relation to section 135(a) (ii) of the CPA, the emphasis is that, the charge must contain the essential elements of the offence and the specific section of the enactment or the law creating the offence. These requirements are pivotal so as to enable the accused person to understand the nature of the offence he is facing and thereby prepare his defence. This sound principle of law was articulated by the Court of Appeal in the case of **Isidori Patrice Vs. Republic**, Criminal Appeal No. 224 of 2007 (CAT-unreported) where the Court held that:

It is a mandatory statutory requirement that every charge in a subordinate court shall contain not only a statement of the specific offence with which the accused is charged but such particulars as may be necessary for giving reasonable information as to the nature of the offence charged... It is now trite law that the particulars of the charge shall disclose the essential elements or ingredients of the offence. This requirement hinges on the basic rules of criminal law and evidence to the effect that the prosecution has to prove that the accused committed the actus reus of the offence with the necessary mensrea. Accordingly, the particulars, in order to give the accused a fair trial in enabling him to prepare his defence, must allege the essential facts of the offence and any intent specifically required by law.

In the present appeal, the charge with which the appellant was called on to plead to before he was convicted on his own plea and sentence to, was in contravention of the above sections. For easy reference I find it pertinent to reproduce the material part of the charge as here under:

STATEMENT OF THE OFFENCE

CARELESS DRIVING: *contrary to section 41,63(2) (b) and 27 (1) (a) of the Road Traffic Act [Cap 168 R.E 2002]*

PARTICULARS OF THE OFFENCE

CYRILO CHARLES IHARE, on the 19th day of October 2021 along Mwalimu Nyerere Bridge Road at New Camel Oil Petrol station area within Kigamboni District in Dar es Salaam Region, being a driver and incharge of a motor vehicle with registration number T.175 DHX make Toyota IST did drive the said Motor vehicle on public road carelessly to wit, he failed to control his motor vehicle as a result he knocked the road edges and there by caused damages to the said road edges and the said motor vehicle.

From the above excerpt, and as rightly submitted by Mr. Kisima, the above charge sheet did not meet the dictates of section 132 which makes it mandatory that, a statement of a specific offence together with particulars as may be necessary for giving reasonable information as to the nature of the offence charged must be disclosed. Further to that, the charge is in contravention of section 135 (a) (ii) of the CPA which makes it mandatory for the charge sheet to cite a specific section creating the offence. As alluded to above, the appellant in the present appeal was charged with the offence of careless driving under section 41 of the Road Traffic Act, which its ingredients are to do acts resulting into bodily harm or death to a person, but the particulars of the offence in the matter at hand provided that the appellant's acts resulted into destruction of the road edges and a vehicle.

Thus, the ingredients of offence provided in that section 41 of the Act, do not tally with the particulars of the offence contained in the charge sheet. Under those circumstances the charge is rendered to be fatally defective, which defect cannot be cured under section 388 of the CPA. As a result the plea obtained therefrom by the appellant is rendered equivocal, hence the condition and sentence thereto were illegally procured. It is a well settled principle of law that, a defective charge leads to unfair trial to the accused. This principle was expounded in the case of **Abdallah Ally Vs. Republic**, Criminal Appeal No. 253 of 2013 (CAT-unreported) cited with approval in the case of **Robert Madololyo & Another Vs. R**, Consolidated Criminal Appeals No. 46 and 428 of 2019 (CAT-unreported) where the Court held that:

Being found guilty on a defective charge based on a wrong or non-existent provision of the law is evident that the appellant did not receive a fair trial. The wrong and/or non- citation of the appropriate provisions of the Penal Code under which the charge was preferred left the appellant unaware that he was facing a severe charge of rape."

Applying the above principle to the facts of the present appeal, it is apparent to me that, the appellant was not accorded a fair trial. For that anomaly, this

court agrees with Mr. Kisima that, the proceedings and judgment of the trial court became a nullity. Consequently, the appeal is hereby allowed. I therefore proceed to nullify both the proceedings and judgment of the trial court, quash the conviction and set aside the sentence meted on the appellant and subsequent orders thereto. I finally order that the appellant's driving licence be restored to him with immediate effect.

It is so ordered.

DATED at DAR ES SALAAM this 22nd day of July 2022.



E. E. KAKOLAKI

JUDGE

22/07/2022.

The Judgment has been delivered at Dar es Salaam today 22nd day of July, 2022 in the presence of the Appellant in person and Ms. Monica Msuya, Court clerk and in the absence of the Respondent.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

22/07/2022.