

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**DC CRIMINAL APPEAL NO. 54 OF 2022**

(Arising from judgment of the District Court of Dodoma at Dodoma in Traffic Case No. 123 of 2022 dated 2<sup>nd</sup> August, 2022 before D. J. Mpelembwa-SRM)

**DAUD MICHAEL JOSHUA..... APPELLANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

*21/9/2022 & 5/10/2022*

**JUDGMENT**

**MASAJU, J**

The Appellant, Daud Michael Joshua, was tried and convicted of the offence upon his own plea of guilty to the three offences, 1<sup>st</sup> Count, **Causing Death Through Careless Driving** contrary to sections 41, 27 (1) (a) and 63 (2) b of the Road Traffic Act [Cap 168 RE 2002], 2<sup>nd</sup> Count **Reckless Driving** contrary to sections 42 (a) and 63 (2) b of the Road Traffic Act [Cap 168 RE 2002] and the 3<sup>rd</sup> count **Reckless Driving** contrary to sections 42(a) and 63(2) (b) of the Road Traffic Act, [Cap 168 RE 2002] in the District Court of Dodoma at Dodoma. On the 1<sup>st</sup> Count, he was sentenced to serve three (3) years imprisonment with no option to fine. On the 2<sup>nd</sup> Count he was sentenced to serve two (2) years imprisonment with no option to fine

and the 3<sup>rd</sup> Count he was sentenced to serve one (1) year imprisonment with no option to fine. The sentences to run concurrently. The trial court also suspended the Appellant's driving licence for three (3) years. Hence the appeal in the Court against the sentence.

The Appellant's Petition of Appeal is made up of one ground of appeal challenging.

When the appeal was heard in the court on the 7<sup>th</sup> day of September, 2002 the Appellant was represented by Mr. Majaliwa Wiga, the learned counsel while the Respondent Republic was represented by Mr. Salum Matibu, the learned State Attorney.

The Appellant argued that in all three counts the Appellant was sentenced to suffer custodial sentence without option to fine, which is contrary to section 63 (2) (b) of the Road Traffic Act. That the said section provides for penalty which is either fine or imprisonment. That, the trial court erred by not first preferring fine to custodial sentence as so provided in the law and **Salum Shaban V.R [1985] TLR 71**. That, pursuant to section 28(a) (b) of the Road Traffic Act [Cap 168] the trial court could have exercised its discretion on the cancellation of driving licence upon hearing the Appellant first. The Appellant prayed the Court to allow the appeal in terms of sentence only.

The Respondent Republic supported the appeal in its entirety on the grounds thus; That the trial court ought to have considered fine first prior to resorting to custodial sentence pursuant to the sentencing principles.

Indeed, section 63(2) (b) of the Road Traffic Act [Cap 168 RE 2002] provides for the penalty for the offences thus,



*"63. (2) Any person who is convicted of*

*(b) an offence under 41, 42 or 44 shall be liable to a fine of not less than fifteen thousand shillings but not exceeding fifty thousand shillings or to a term of imprisonment of not less than two years but not exceeding five years..."*

The above provision of law imposes a mandatory penalty for the courts to consider the provision in sentencing as regards section 53 (2) of the Interpretation of Laws Act [Cap 1] which provides thus;

*"where in a written law the word "shall" is used in conferring a function such word shall be interpreted to mean that the function so conferred must be performed".*

Thus, the trial court ought to have considered an option of fine first prior to resorting to the custodial sentence against the Appellant as so rightly submitted by the parties, as per sentencing principles.

As regards the cancellation of the Appellant's driving licence pursuant to section 27(1) (a) of the Road Traffic Act [Cap 168 RE 2002] the trial court ought to have given the Appellant the opportunity to mitigate before deciding on whether or not to cancel the driving licence. This would have given the trial court justification for cancellation in accordance with the facts and material presented before the court though the cancellation thereof was mandatory.

Since section 28 (1) (a) & (b) of the Road Traffic Act, [Cap 168 RE 2002] was not cited in the Statement of the Offence of **Causing Death Through Reckless Driving**, the trial court can not exercise its discretion powers as to whether or not the offender's driving licence should be cancelled or suspended and the term, if any, thereof.

That said, the Court hereby invokes its revisionary powers under section 372 (1) of the Criminal Procedure Act [Cap 20] to nullify, quash and set aside the sentences and the order thereof. *In lieu* thereof the original record is hereby remitted back to the trial court for it to consider the sentence against the offender in accordance with the law, and the procedure governing the cancellation of Driving Licence, which procedure includes the right to the offender to be heard on the intended driving licence cancellation so that the trial court can be well informed of the mitigating facts, if any, as it considers the mandatory cancellation of the driving licence it intends to impose upon the offender pursuant to section 27(1) (a) of the Road Traffic Act, [Cap 168].



  
GEORGE M. MASAJU

**JUDGE**

5/10/2022