

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[IN THE DISTRICT REGISTRY]

AT ARUSHA

CONSOLIDATED CRIMINAL REVISION NO. 04 OF 2019

(C/F Traffic Case No. 1, 12, 15, 17, 50, 51, 53/2017, No. 5, 6, 7, 22,
39/2018 and No. 1, 2, 4, 5, 7, 8, 9/2019 at Karatu District Court)

THE REPUBLIC.....APPLICANT

VERSUS

BRUNO GEORGE SARWAT.....1ST RESPONDENT

JOHN LONG.....2ND RESPONDENT

ALEX WILSON MBUGHI3RD RESPONDENT

WILBRODI NIIMA @BURA.....4TH RESPONDENT

NASORO BAKARI.....5TH RESPONDENT

CHARLES JOEL @BASO.....6TH RESPONDENT

CHRISTOPHER LATIF.....7TH RESPONDENT

SHABANI MOHAMED @OMARY.....8TH RESPONDENT

BURA TLUWAY @AKONAAY.....9TH RESPONDENT

SIFUNI AMOS MUNGURE.....10TH RESPONDENT

ABDI FARAJI @MUNISI.....11TH RESPONDENT

OREST PAUL.....12TH RESPONDENT

ANTONY ADRIAN.....13TH RESPONDENT

JAMES JULIAS.....14TH RESPONDENT

NIXEL WILHELM HARTMUT.....15TH RESPONDENT

PHILEMON PAULO.....16TH RESPONDENT

DAWI MUSSA DAWAS.....17TH RESPONDENT
MICHAEL LYIMO @ROCK.....18TH RESPONDENT
PAULO FRANK @CHARLES.....19TH RESPONDENT

ORDER IN REVISION UNDER SECTION 44 (1) (a) of the MCA, Cap
11 RE 2002.

31/08/2020 & 11/09/2020

MZUNA, J.:

During the first quarter of 2019, I did an ordinary inspection at the District Court of Karatu at Karatu (hereafter the trial court). In my inspection I noted that there were several traffic cases (as shown above herein) in which the trial court imposed sentences after conviction which do not correlate with the law. I therefore directed the said cases to be brought before me for revision in order to rectify the irregularities and errors thereto.

The main issue is whether the orders imposed by the trial court contravenes the law and is against the interest of justice? In this connection, this court will determine:-

- 1. Whether it was proper for the trial court to refrain from cancelling the driving licence(s) for the accused (respondents) upon conviction for causing death through careless driving contrary to sections 41, 42 (1) (c) of the Road Traffic Act, Cap 168 R.E 2002?*
- 2. Whether it was proper for the trial court to impose concurrent sentences where there were more than one counts?*
- 3. Whether it was proper to impose fine for the offence of dangerous driving under section 40 of the Road Traffic Act, Cap 168 R.E 2002?*

Almost, all the counts which the above respondents were facing fell within the sections which calls for cancellation of the driving licence but that provision was not incorporated in the charge sheet or was not applied by the trial court.

During the hearing the applicant was represented by Ms. Tusaje Samwel, learned State Attorney. Only some of the respondents (8th, 9th, 10th, 11th, 12th, and 13th) were traced and appeared in person before the court. They fended for themselves, unrepresented.

Ms. Samwel the learned State Attorney, for the applicant argued that the offences committed by the respondents attracted a penalty of mandatory cancellation of driving licence for a period of three years. In that he referred to section 373 (1) (a) of the Criminal Procedure Act, Cap 20 R.E 2002 to urge the court to impose such mandatory cancellation of the driving licences for all the respondents.

With regard to the Traffic Case No. 6 of 2018 (Republic v. Antony Adrian) relevant to the third issue, the learned State Attorney argued that the sentence of fine imposed was not proper since the same attracts a penalty of three years imprisonment.

On their part, the respondents prayed the court not to cancel their driving licences since the living of their dependants depends entirely on their driving business. The 13th respondent submitted that he is currently taking care of the deceased's (victim) family and his licence was cancelled by the trial court.

I have gone through the submissions in line with the record. This court has power to enhance the sentence under section 373 (1) of the Criminal Procedure Act, Cap 20 RE 2002. It reads:-

"373 (1) In the case of any proceedings in a subordinate court, the record of which has been called for or which has been reported for orders or which otherwise comes to its knowledge, the High Court may-

*(a) in the case of conviction, exercise any of the powers conferred on it as a court of appeal by sections 366, 368 and 369 **and may enhance the sentence; or...**"* (Emphasis mine)

Let me start with the Traffic Cases No. 15 for Philemon Paul and No. 17 for Dawi Mussa Dawasa both of 2017. In these cases the accused were charged with one count of causing death through careless driving contrary to section 42 (1) (c) of the Road Traffic Act, Cap 168 R.E 2002 (hereafter the Act). The trial court convicted and sentenced the 15th and 17th respondents to pay a fine of Tshs 30,000/= or two years jail term without an order for cancellation of their driving licences. In view of the clear provisions of the law under section 27 (1) (a) of the Act, such sentences were illegal for being imposed in disregard of the mandatory provisions of the law. Therefore, in exercise of revisional powers I order cancellation of driving licence for the 15th and 17th respondents for a period of two years from today.

Traffic case No. 50 of 2017 for Michael Lyimo @ Rock, 18th respondent was charged with two counts of causing death through careless driving c/s

41 and 63 (b), 27 (1) (b) and causing damage to a motor vehicle c/s 61 and 63(1) of the Act. He was sentenced to pay fine in addition to suspension from driving a motor vehicle for a period of three months after saying the accident was out of his willing. This court cannot interfere with the imposed sentence because the mitigating factors were special to the offence not to the offender. That would also cover the 11th respondent Abdi Faraji @ Munisi who equally gave reasons special to the offence where the passenger who was knocked abruptly crossed from the parked motor vehicle.

In Traffic Case No. 51 of 2017, the 12th respondent Orest Paulo, was charged with four counts of causing death through careless driving, causing bodily injury through careless driving, driving a motor vehicle without a licence and causing damage to motor vehicle. The problem is on absence for the consecutive sentence order otherwise there was paid total fine of Tshs 90,000/- There ought to have been a consecutive sentence order, which is hereby imposed.

The 19th respondent Paul Frank was charged with three counts in Traffic Case No. 53 of 2017. He was sentenced to a fine of Tshs 30,000/= or two years jail term in default for the first and second counts. For the third count, he was sentenced to a fine of Tshs 15,000/= or one year imprisonment in default. The sentence was to run concurrently. This sentence is improper in law. A sentence of fine has to be consecutive for each count. Again there was no mandatory cancellation of the driving licence. I therefore order the cancellation of the respondent's driving licence for a period of two years from today. The sentence for fine to run consecutively.

For the 15th respondent Nixel Wilhelm Hartmut, Traffic Case No. 12 of 2017, he was charged with two counts one for causing death through careless driving of a motor vehicle and that of driving a motor vehicle without a valid insurance. He was sentenced to a fine of Tshs 50,000/= or two years imprisonment in default in respect of the first count. For the second count he was sentenced to a fine of 20,000/- or one year prison term. The sentence are hereby ordered to run consecutively not concurrent sentence as ordered by the trial magistrate. I further order cancellation of a driving licence for a period of two years from today.

Turning to the Traffic Case No. 1 of 2017, the 1st respondent Bruno George Sarwat, was charged with three counts and sentenced to a fine of Tshs 40,000/= or two years imprisonment for the first count and 15,000/= for the two counts or serve 9 months imprisonment. The sentence imposed was improper for the reasons that the sentence of fine has to run consecutively not concurrently as ordered by the trial court. I hereby order a consecutive sentence. Second, the driving licence of the respondent also is cancelled for a period of two years from today.

The 7th respondent Wilbroad Niima @ Bura, Traffic Case No. 5 of 2018 was charged with one count under section 41 of the Act for causing death through careless driving. He was sentenced to a fine of Tshs 50,000/=. There was no cancellation of driving licence. I therefore, order cancellation of the respondent's driving licence for a period of two years from today.

Similarly, the 14th respondent James Julius, Traffic Case No. 7 of 2018, he was sentenced to a fine of Tshs 180,000/= (concurrent sentence) for four counts of causing death through careless driving of a motor vehicle, three

counts for causing bodily injury through careless driving of a motor vehicle and one count of driving a motor vehicle without a valid insurance. There was no cancellation of his driving licence for reasons that the break failed but that was not stated by the accused/respondent in his mitigation. It arose during sentence by the trial Magistrate. That is improper. I hereby order cancellation of the driving licence for a period of two years from today. The sentence of fines to run consecutively.

The 13th respondent Antony Adrian (Traffic Case No. 6 of 2018) was charged with four counts: Two counts for Causing death through dangerous driving c/s 41 (sic) and s. 63 (2) of the Act, one count for causing injuries through dangerous driving of a motor vehicle c/s 41, another count for driving a motor vehicle while under the influence of drink of alcohol c/s 45 (1) of the Act, and another for causing damage of a motor vehicle under section 61 and 63 (1) (a) of the Act. He was sentenced to a fine of Tshs 40,000/= for the first count, 15,000/= for the second count and 10,000/= for the other two counts. The sentences were ordered to run concurrently.

The order for fine sentence should read a consecutive sentence. The respondent was wrongly charged for the offence of dangerous driving of a motor vehicle which falls under section 40 (1) and (2) of the Act. The same is hereby substituted. The appropriate sentence is as stated under section 63 (2) of the Act, which reads that:-

"63. (1) N/A

(2) Any person who is convicted of—

(a) an offence under section 40 shall be liable to a term of imprisonment of not less than three years and the

court may, in addition thereto, impose a fine not exceeding one hundred thousand shillings..”

I direct that he **should serve two years imprisonment for the first count effective from 31st August, 2020** when hearing of this matter commenced and then committed to prison. It should be a consecutive sentence with other counts. His driving licence was cancelled for three years. I cannot interfere on that.

The 10th respondent Sifuni Amos @ Mungure, Traffic Case No. 22 of 2018 he was charged with one count for causing death through careless driving under section 41 and section 63 (2) (b) of the Act and sentenced to a fine of Tshs 50,000/= or two years in default without an order for cancellation of the driving licence. I hereby impose an order that a driving licence to be cancelled for two years effective from today.

The above order for cancellation of driving licence for two years from today applies as well to the 11th respondent Abdi Faraji @ Munisi Traffic Case No. 39 of 2018, who was charged with and convicted on similar count and sentenced to pay a fine of Tshs 40,000/- or serve two years jail in default.

In Traffic Case No. 1/2019, Shabani Mohamed @ Omary was charged with two counts one for causing death through careless driving and another for causing bodily injury both under section 41 of the Act. he was sentenced to pay a fine of Tshs 50,000/=. There was no order for cancellation of licence. I therefore, impose a sentence of imprisonment for a period of two years from today and the fine sentence to run consecutively.

The 2nd respondent John Long, Traffic case no. 2/2019, who was charged with one count for causing death through careless driving c/s 41 of the Act and two counts for causing bodily injury through careless driving c/s 41 of the Act. I impose a consecutive sentence of Tsh 50,000/- for each count as well as an order for cancellation of a driving licence for two years from today.

In Traffic Case No. 4 of 2019 Alex Wilson @ Mbugi the 3rd respondent and Traffic case N0 5 of 2019 4th respondent Wilbroad Niima, both were charged with one count under section 41 of the Act for causing death through Careless driving. They were sentenced to a fine of 30,000/= and 50,000/= respectively. In this respect, there was no cancellation of driving licence. I therefore, impose an order for cancellation of driving licences for the two respondents above mentioned from today.

Traffic Case No. 7 and 8 of 2019, the 5th and 6th respondents (Nassoro Bakari, and Charles Joel respectively), they were charged with four counts each. The fine sentence were not ordered to run consecutively, I hereby substitute that order for each respondent. Similarly, there was no order for cancellation of driving licence. Each respondent is hereby cancelled his driving licence for two years from today.

In Traffic Case No. 9 of 2019 the 9th respondent Bura Truway @ Akonay, he was charged with two counts under section 41 and 42 of the Act. The trial court sentenced the respondent to pay a fine of Tshs 50,000/= or two years imprisonment in default. There was no order for cancelation of

driving licence. I therefore substitute order for cancellation of driving licence for two years from today. The fines sentence should run consecutively.

As above noted, this court has exercised its powers under section 373 (1) (a) to revise and vacate the sentences imposed and enhanced the sentences for the interest of justice. The law applicable is Section 44 (1) (a) of the Magistrates Courts Act, Cap 11 RE 2002 which provides for additional powers of supervision of the High court that:-

(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court—

(a) shall exercise general powers of supervision over all district courts and courts of a resident magistrate and may, at any time, call for and inspect or direct the inspection of the records of such courts and give such directions as it considers may be necessary in the interests of justice, and all such courts shall comply with such directions without undue delay.” (Emphasis mine).

Further section 27(1) (a) of the Act provides for a Mandatory cancellation or suspension of driving licence. It reads:-

“27 (1) Any court before which a person is convicted of—

(a) a first offence under section 40, 41, 42 or 44 or paragraph (c) of section 52 shall cancel such person's driving licence for a period of not less than three years and shall declare that person to be disqualified from obtaining a driving licence of any type during such period.”

The magistrates are reminded that whenever appropriate an order for compensation to the victims should also have been imposed as provided for under section 348 (1) of the Criminal Procedure Act, Cap 20 RE 2002 over and above any other civil suit that may be instituted. That provision reads:-

S. 348.

(1) Where an accused person is convicted by any court of any offence not punishable with death and it appears from the evidence that some other person, whether or not he is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed and that substantial compensation is, in the opinion of the court, recoverable by that person by civil suit, the court may, in its discretion and in addition to any other lawful punishment, order the convicted person to pay to that other person such compensation, in kind or in money, as the court deems fair and reasonable."

Notwithstanding that anomaly, it is my considered view that an order for compensation is not proper at this moment. As above noted the respondent No.12 **Antony Adrian** is sentenced to a jail term of two years effective from 31st August 2020. His mitigating factors that the family of the victim depends on him and that his driving licence was cancelled cannot rule out a jail term having been also convicted for driving a motor vehicle while under the influence of drink of alcohol. By order.



M. G. MZUNA,
JUDGE.

11. 09. 2020