THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

CRIMINAL APPEAL NO. 0003 OF 2010

KAGERE IBRAHIM::APPELLANT

VERSUS

UGANDA:: :::::::RESPONDENT

[Appeal from the decision of His Worship Mr. Komakech Robs Williams (Magistrate GI) dated the 7th January 2010 in Jinja Criminal Case No.TO.02/10]

BEFORE: HON. LADY JUSTICE IRENE MULYAGONJA KAKOOZA

JUDGMENT

The appellant was charged with reckless or dangerous driving contrary to s. 110 and causing death through dangerous driving c/t s. 108 of the Traffic and Road Safety Act (TRSA). He pleaded guilty and was sentenced to 2 years imprisonment on the first count and 2 years and 4 months imprisonment on the second count. Both sentences were to run concurrently. He appealed against the decision on the ground that the trial magistrate did not take his plea properly and thus occasioned an illegality. He prayed that this court re-evaluates the plea and orders a re-trial.

At the hearing of the appeal, Ms. Evelyn Kabonesa who represented the appellant argued that there was an omission in the process of taking the plea. That after the charges were read to the appellant in Lusoga, he pleaded guilty. But when the statements of the particulars of the offences were read to him, they were not particularised in detail to show the essential ingredients of each offence to him. She told court that her client revealed to her that he admitted that he drove the car in question on the date that the offence occurred. That though he did so he did not admit to having done so recklessly. She argued that in the statement of

the particulars of the offence to the accused, that particular ingredient was not explained at all. In her view, the accused person had to plead to each of the ingredients of the offence before a plea of guilty could be entered against him. She relied on the decisions in the cases of **Korir v. Republic [2006] E.A. 124** and **Adan v. Republic [1973] EA 445** for her submissions and prayed that the plea of guilty and the sentences be set aside and a new trial be ordered.

Mr. Sewankambo Hamza who represented the state argued that there was no omission in the taking of the plea. Referring to the record, he submitted that both counts were read to the accused person in his language – Lusoga and explained to him. He also submitted that after that the record shows that the particulars of each count were read to him. Relying on the decision in the case of **Adan v. Republic** (supra) he submitted that the accused person had offered an unequivocal plea of guilty which he should not be allowed to retract. He prayed that the appeal be dismissed and the plea and sentences be confirmed.

The Magistrates Courts Act is the basis for the arraignment in the lower courts in Uganda. S. 124 thereof provides as follows:

> "(1) The substance of the charge shall be stated to the accused person by the court, and the accused person shall be asked whether he or she admits or denies the truth of the charge.
>
> (2) If the accused person admits the truth of the charge, the admission shall be recorded as nearly as possible in the words used by him or her, and the court shall convict him or her, and pass sentence upon or make an order against him or her, unless there shall appear to it sufficient cause to the contrary."

There is no statutory requirement that the particulars of the offence be read to the accused and explained before he/she convicted. However, in practice, the procedure laid out in the case of **Adan v. Republic** (supra) has been adopted by the courts in Uganda. The passage of the decision that is often cited and relied on in cases such as this one reads as follows:

> *"When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language he can speak and understand. The magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused admits all those essential elements, the magistrate should record what the accused said, as nearly as possible in his own words and then formally enter a plea of guilty. The magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts. If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilt, the magistrate should record a change of plea to "not guilty" and proceed to hold a trial. If the accused does not deny the alleged facts in any material respect, the trial magistrate should record a conviction and proceed to hear any further facts relevant to sentence. The statement of facts and the accused's reply must of course be recorded."*

The court observed that the statement of facts enables the magistrate to satisfy him/herself that the plea of guilty was really unequivocal and that the accused had no defence. It also gives the magistrate the basic material on which to assess sentence.
In the instant case, the trial magistrate recorded that both counts were read to the accused person and explained to him in the following manner:

> *"Court: Charge read and explained to the accused on count 1 in the local language (Lusoga)."*

The trial magistrate made a similar note for the second count. When it came to reading of the facts to the accused person, the following record appears:

> *"Prosecution: - Brief facts.*

On 03.12.2009 at Masese road in JMC near Fairland University, accused while driving recklessly, caused the death of Amoo Mary while driving motor vehicle Reg. No. UAG 976L.

The matter was reported to Jinja CPS. The accused was arrested, brought to Jinja CPS and subsequently charged on both counts."

The particulars of the offence regarding count 1 against the appellant were stated in the charge sheet in the following manner: -

"Kagere Ibrahim on the 3rd day of Dec. 2009 at Masese Road in Jinja drove a motor vehicle Reg. No. UAG 976L recklessly."

Regarding the 2nd count the charge sheet read:

"Kagere Ibrahim on the 3rd day of December 2009 at Masese Road in Jinja District caused death of Amoo Mary by driving a motor vehicle registration number UAG 976L recklessly."

It is the same particulars that were read to the appellant. I therefore agree with the submission that the meaning of the term "recklessly" was never explained to the appellant. The word "reckless" could mean a number of things. It could mean that the subject was heedless or careless, headstrong or rash or that he was indifferent to or disregarded the consequences of his action. It is imprudent and impractical to purport to explain a word using the same word. The prosecution in this case ought to have explained the meaning of the word "reckless" to the accused person to facilitate understanding of the charge as well as to satisfy the trial magistrate that the accused understood the facts and thus the offence that he was admitting that he committed.

Before I conclude, I am constrained to point out the unfortunate fact that it has become the practice by State Attorneys and Prosecutors in the courts today not to state the particulars of offences sufficiently to enable quick understanding of charges by accused persons. This is compounded by the fact that in most cases, the charge or indictment has to be translated into

another language to enable the accused person to comprehend it. For example, on an indictment for murder the prosecution will frame the indictment as follows: -

> *"STATEMENT OF OFFENCE*
> *Murder contrary to section 188 and 189 of the Penal Code Act.*
>
> *PARTICULARS OF OFFENCE*
> *A.B. on the 17th day of January 2006 at Nakapinyi village in Mukono District* ***murdered*** *C.D."*

This is in spite of the fact that s. 188 of the Penal Code Act gives the elements of the offence within it as it provides that *"any person who of malice aforethought causes the death of another person by an unlawful act or omission commits murder."* The essential elements in an indictment for murder would therefore be: i) commission or omission of an act, ii) unlawfully iii) with malice aforethought and, iv) causing death of the deceased. The particulars of the offence should bear this out so that the statement of the particulars above would read:

> *"A.B. on the 17th day of January 2006 did by an unlawful act (omission) and with malice aforethought cause the death of C.D."*

In the instant case, s.110 of the TRSA does not provide the ingredients of the offence of reckless driving in detail though it provides the ingredients of the offence of dangerous driving. It provides as follows:

> "A person who, on any road—
> (a) recklessly drives a motor vehicle, trailer or engineering plant;
> (b) drives a motor vehicle, trailer or engineering plant at a speed which, having regard to all the circumstances of the case, is or might be dangerous to the public or to any person; or
> (c) drives a motor vehicle, trailer or engineering plant in a manner which, having regard to all the circumstances of the case, is or might be dangerous to the public or to any person, …"

Notwithstanding that the ingredients of reckless driving are not provided, I am of the opinion that the prosecution was under an obligation to find out what is meant by the word “reckless” in the Act and to provide the facts relating to that ingredient of the offence as deduced from the statements on the police file. They would then be in a position to supply them to the accused person in case he pled guilty to the offence. Since the charge was insufficiently framed, the prosecutor could not achieve this. It definitely occasioned a miscarriage of justice if the accused person pled to an offence that he did not wholly understand.

In the circumstances, this appeal succeeds. The prosecution will reframe the charge sheet in order to clearly reflect the particulars of the offences that they intend to charge the appellant with. The appellant will then take a fresh plea before the trial magistrate. He is of course entitled to apply for bail in the trial court.

Irene Mulyagonja Kakooza
JUDGE
21/07/2010