

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA; AT FORT PORTAL

CRIMINAL APPEAL No. 0016 OF 2008

(From the conviction and sentence by His Worship Karemani Jameson Karemera, dated the 15th
August 2008, in FPT Traffic Case No. 0012 of 2008)

IDIRISAA MUGISA APPELLANT

VERSUS

UGANDA RESPONDENT

BEFORE: - THE HON MR. JUSTICE ALFONSE CHIGAMOY OWINY - DOLLO

JUDGMENT

The Appellant herein was charged, in the Fort Portal Chief Magistrate’s Court, with the offence of reckless driving in contravention of sections 4(1) (a), and 5(b), of the Traffic and Road Safety Act, 1970. He admitted the charge; whereupon the trial Magistrate entered a plea of guilty. After the facts of the charge were presented, the Appellant agreed and confirmed that it was correct; and thus, the trial Magistrate convicted him, and sentenced him to six months in prisons. He has appealed against both conviction and sentence, and urges this Court to quash the conviction and set aside the sentence, on grounds set out in the memorandum of appeal; which are that: -

1. The trial Magistrate Grade 1 erred in law and fact when he failed to follow the procedure of recording a plea of guilt.
2. The trial Magistrate Grade 1 erred in law and fact when he convicted and sentenced the Appellant on a purported plea of guilt.

3. Alternatively, the trial Magistrate Grade 1 erred in law and fact when he sentenced the Appellant to six months imprisonment without the option of a fine.

In the written submissions made on behalf of the Appellant, Counsel argued that the plea of guilty on which the Appellant was convicted and sentenced was equivocal as, first, it is not clear who read and explained the charge in Rutooro to the Appellant, nor whether the essential ingredients of the charge were explained to him. Second, counsel argues that the facts of the case presented to Court were at variance with the offence for which the plea of guilty had been entered. Finally, counsel argues that the sentence imposed by the trial Magistrate was disproportionate, and did not consider the option of a fine, given that the Appellant had pleaded guilty.

Section 124 of the Magistrates Courts Act 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.

I have examined the charge sheet in issue; and have perused the charge framed therein against the Appellant, which reads as follows:

CHARGE

UGANDA vs MUGISHA EDIRISA M/A 37 YEARS MUTORO, DRIVER OF LINK BUS SERVICES - F/PORTAL, RESIDENT OF KISENYI F/PORTAL MUNICIPALITY IN KABAROLE DISTRICT.

STATEMENT OF OFFENCE:

RECKLESS DRIVING C/S 4(1) (a) AND 5(b) OF THE TRSA 1970 CAP 360

PARTICULARS OF OFFENCE

MUGISHA EDIRISA ON THE 13TH DAY OF AUGUST 2008 AT ABOUT 1200HRS AT KASUSU TRADING CENTRE ALONG F/PORTAL - KASESE ROAD IN THE DISTRICT OF KABAROLE DISTRICT, DID DRIVE M/V REG NO. UAK O77X NISSAN BUS GREEN IN COLOUR ON ROAD IN SUCH A MANNER WHICH WAS OR MIGHT HAVE BEEN DANGEROUS TO THE PUBLIC HAVING REGARD TO ALL THE CIRCUMSTANCES OF THE CASE.

I have also had the benefit of perusing the Court proceedings at the time of taking plea - both the original handwritten record of the trial Magistrate, and the certified copy - and I should point out here at the outset that the certified copy of the proceedings is slightly at variance with the handwritten notes of the trial Magistrate in some respect. The handwritten record, which I here reproduce exactly in the manner it was written, is as follows: -

"15/8/08

Acc in Ct

Kabajungu, for the State

Kirungi, inter

Court, C/s read and & ingr expl in Rutooro.

Acc: I have understood. It is true I drove that bus recklessly.

Court PG entered"

However, the certified record instead states as follows: -

“Court: The charge sheet is received and read to the accused and explained in Rutooro.”

This is at variance with the handwritten record set out in extenso above, in that it does not mention that the ingredients of the charge were read out and explained to the Accused in the way the handwritten record does.

On the contention by the Appellant’s counsel that it is not clear who read or explained the charge to the Accused, the record is clear that this was by Court. In any case, there is no complaint from the Accused that it was not the trial Magistrate who explained the charge to him. The Court record showing that the charge was read out and explained to the Accused person Rutooro, should not lead to confusion as the record shows that Court had the services of a Rutooro interpreter. The interpreter was the medium between the Court and the Accused, using the English and Rutooro languages respectively. The Rutooro language in which the charge was explained to the Accused was in enforcement of his right to a fair trial in a language he understands; a right conferred on him by law, as was held in *Adan v. Republic [1973] E.A. 445* .

There is thus no basis for Counsel’s suggestion that because the record states that the charge was explained to the Accused in Rutooro, someone else other than the trial Magistrate could have done so. However, there is a real problem with the particulars of the offence as reproduced herein above. From the provisions of section 4(1) (a) of the Traffic and Road Safety Act, 1970, which was one of the residual provisions of the 1970 Act left still in force, despite the repeal of that

Act by the Traffic and Road Safety Act, 1998, the ingredients of the offence created which had to be satisfied before an Accused could be found guilty, and convicted, were: -

- (i) The Accused must have driven a motor vehicle, trailer, or engineering plant.
- (ii) The Accused must have driven the motor vehicle, trailer, or engineering plant on a road.
- (iii) The Accused must have driven the vehicle, trailer, or engineering plant in (i) and (ii) with recklessness.

The purpose of particulars of the offence in the charge sheet is to set out the detail of the offence stated in the statement of offence. It is a cardinal rule of procedural and substantive law that the particulars of the offence must strictly reflect the offence as expressed in the statement of offence from which it is formulated. Where the particulars of offence depart from the statement of offence charged, the charge is defective; and unless it is amended, it is fatal. In such a situation, the trial Court would find problems explaining to the Accused the ingredients of the charge.

Here, the statement of offence alleged reckless driving by the Accused; and yet the particulars of the offence alleged dangerous driving. However, 'reckless driving' and 'dangerous driving' are provided for under separate provisions of the same Act. Whereas reckless driving is provided for in section 4(1) (a), dangerous driving is provided for in section 4(1) (b) and (c). The Act neither defines the words 'reckless' or 'dangerous', nor the phrases 'reckless driving' or 'dangerous driving'. However from the separate provisions of the Act creating two distinct offences, it is clear that: 'dangerous driving' is so

when the driving is done either at a speed, or in a manner, which constitutes a danger *'to the public or to any person'*.

On the other hand, 'reckless driving' does not refer either to 'speed' or to any 'danger to the public or to any person' at all. Thus, the 'reckless' driving which the Accused is recorded to have admitted being guilty of, thus: *"I have understood. It is true I drove that bus recklessly"*, and yet the particulars of the offence referred to 'dangerous driving', must have been due to the interpreter's failure to distinguish between 'reckless driving' and 'dangerous driving'. The **Oxford Dictionary of English**, which gives 'reckless driving' as an example, defines 'reckless' as: *"heedless of danger or the consequences of one's actions; rash or impetuous"*.

Therefore, 'reckless driving' is an offence under this Act, only where the mischief (the danger or consequences) envisaged is directed such other things as animals, structures, or vehicles; but not against humans. On the contrary, dangerous driving is an offence where it is so done either at a speed or in a manner that endangers the public or any person. In view of the variance between the statement of offence and the particulars of the offence in the charge, it must have been a great source of confusion in the process of explaining the ingredients of the charge to the Accused, for him to appreciate and make an unequivocal plea. The trial Magistrate should have pointed out this defect to the prosecution for the necessary amendment.

It follows from this disparity and obvious confusion that the trial Magistrate could not have afforded the Accused, who unfortunately relied on the Rutooro language interpretation, and had no legal representation, any meaningful explanation of the ingredients of the

offence for which he was charged. Indeed, such confusion is compounded by the facts of the case as presented to the Court by the prosecution. The facts of the case read as follows: -

“The facts are that on the 13/8/08 at about 1200hrs along F/Portal - Kasese road, the accused person was driving m/v Reg. No. UAK 077X Nissan Bus green in colour from F/Portal town to Kasese. While on the road, the accused drove his bus leaving his lane of the side of the road and he drove towards a Kalita bus of Reg. No. UAG 409T, which was being driven by one Kabinda Alex, which was parked at Kasusu stage at Kasusu Trading centre. The accused knocked that Kalita bus. The accused drove away. The driver of the Kalita bus proceeded to Kasusu police post on his way to Fort Portal. The matter was referred to Fort Portal Police Station. A sketch plan of the scene of crime was drawn, the vehicles were inspected. At the police station the accused was charged and brought to court.”

To this, the accused (now Appellant) responded as follows: -

“I have heard the facts as narrated they are correct.”

This was, at the stage of ascertaining whether the Accused should be convicted or not. While the facts of the case was in conformity with the charge of ‘reckless driving’ as given in the statement of offence, it however pointed to an altogether different offence from the particulars of the offence; and, worse still, this had to be conveyed to the Accused in the Rutooro language and then his answer was relayed back to Court in the English language. From the above, the plea of guilt by the Accused, and his subsequent purported assent to the correctness of the facts of the case presented, which led to his

conviction, was of no avail as the crucial test at the stage of plea - taking had failed due to the fatally defective charge.

I therefore allow this appeal, quash the conviction of the Accused appealed from, and set aside the sentence imposed. In the event, there is no need to address the other grounds of appeal, such as the issue of appropriateness of the sentence imposed, as this would largely be a moot point.

A handwritten signature in black ink, appearing to read 'Alfonse Chigamoy Owiny - Dollo', written in a cursive style.

Alfonse Chigamoy Owiny - Dollo

JUDGE

04 - 03 - 2013