

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA**

**CRIMINAL APPEAL NO. 056 OF 2008**  
(ARISING FROM MUKONO TRAFFIC CASE NO. 94/2007)

**BOSSA**  
**FREDRICK ::**  
**APPELLANT**

**VERSUS**

**UGANDA ::**  
**:::::: RESPONDENT**

**BEFORE: THE HON. JUSTICE GODFREY NAMUNDI**

**JUDGMENT**

This is an appeal arising from the Judgment of His Worship Byaruhanga Jesse, Magistrate Grade 1 (then) in which he convicted and sentenced the Appellant on one Count of Careless Driving c/s 119 and 46 (1) (c) of the Traffic and Road Safety Act (Cap. 361). Therein the Appellant was sentenced to pay a fine of Shs.600,000/- or serve 1 year's imprisonment in default.

The Appellant raised 3 grounds of Appeal namely:

1. The trial magistrate erred in law and fact when he failed to evaluate the evidence on record as a whole thus reaching a wrong decision.
- 5     2. The trial Magistrate erred in law and fact when he considered the prosecution evidence in isolation of the defence evidence.
- 10     3. The learned Magistrate erred in law and fact by convicting the Appellant on insufficient evidence.

A look at the 3 grounds reveals that all three grounds are so similar as to be mere repetitions.

- 15   The Appellant in a nutshell faults the trial magistrate for having failed to rely on the evidence of the Traffic Police at the scene who should have established the point of impact. That the victim was hit in the middle of the road and not at the side. That he had suddenly rushed into the middle of the road and it was impossible to stop the vehicle suddenly.
- 20

Secondly, that the magistrate did not consider that the Appellant was driving at a reasonable speed of 40kmph and even stopped and took the victim for treatment.

25

Finally, he says the fine was excessive without giving any justification for so saying.

For the prosecution, it has been submitted that the trial  
5 magistrate properly evaluated the evidence on record as per  
pages 1, 2, 3 and 4 where the magistrate considered the  
evidence of PW1 and corroborated by that of PW2 who all  
confirmed that the complainant was knocked as he stood at  
the side of the road waiting for transport to Kampala.

10

The same evidence was not challenged by the accused during  
cross examination. He even confirmed that he knocked the  
complainant and even took him to Hospital.

15 The magistrate noted that if the Appellant had been driving at  
a reasonable speed, he would have been able to break and  
stop thus avoiding the complaint.

The magistrate in his Judgment cited the case of:

- 20     1. **MC Crone Vrs. Riding (1938)1 ALL ER, and**  
       2. **Taylor Vrs. Rogers (1960) Criminal LR 270 DC.**

He was satisfied that the Appellant did not exercise the degree  
of care and attention that a reasonable, competent and  
25 prudent driver would exercise.

The Appellant had no plausible defence apart from claiming he was driving t 40km p.h. which was reasonable. This is not born out by any evidence.

- 5 Given the fact that he was over taking, the speed could have been much higher than he claims.

This appeal has no merits. It is dismissed accordingly. The Judgment and sentence of the trial Court are upheld.

10

**Godfrey Namundi**

**JUDGE**

**17/03/2015**

15

17/03/2015:

Appellant absent (Has never been traced)

Nabagala for State

5

Court: Judgment read.

**Godfrey Namundi**

**JUDGE**

10 **17/03/2015**