

**THE STATE**

**Versus**

**NKULULEKO MOYO**

IN THE HIGH COURT OF ZIMBABWE  
KAMOCHA J  
BULAWAYO 1 OCTOBER 2015

**Review Judgment**

**KAMOCHA J:** The accused in this matter pleaded guilty to culpable homicide and was found guilty as pleaded. The conviction seems proper and nothing turns on it.

The sentence is, however, a cause for concern. The admitted facts are that on 3 June 2015 at about 1730 hours the accused was driving a Toyota Hiace passenger service vehicle registration number ABJ 3928 along Masiyephambili Road due south. While he was driving the vehicle he hit a 5 year old child who was crossing the road and instantly killing him on the spot.

The accused admitted being negligent in that he had failed to keep a proper look out in the circumstances and had also failed to stop or act reasonably when an accident seemed imminent.

The accused was driving a commuter omnibus but the trial court sentenced him to pay a fine of \$400 or in default of payment 3 months imprisonment and did not prohibit him from driving and cancel his licence as required by section 64 (3) of the Road Traffic Act [Chapter 13:11] “the Act” which provides thus:

“64. Prohibition from driving on conviction of certain offences

- (1) Subject to this Part, a court convicting a person of an offence in terms of any law other than this Act by or in connection with the driving of a motor vehicle on a road may, in addition to any other penalty which it may lawfully impose, prohibit the person from driving for such period as it thinks fit.

- (2) Subject to subsection (3), on a second or subsequent conviction for an offence at common law, which offence involves killing or injuring or attempting to kill or injure a person by or in connection with the driving of a motor vehicle on a road, the court concerned shall prohibit the person convicted from driving for a period of not less than twelve months unless such court, having regards to the lapse of time since the date of the previous or last previous conviction for such offence, prohibits the person convicted from driving for a shorter period or declines to prohibit such person from driving and endorses its reasons for prohibiting or declining on the record of the case when passing sentence.
- (3) If, on convicting a person of murder, attempted murder, culpable homicide, assault or any similar offence by or in connection with the driving of a motor vehicle, the court considers –
- (a) that the convicted person would have been convicted of an offence in terms of this Act involving the driving or attempted driving of a motor vehicle if he had been charged with such an offence instead of the offence at common law; and
  - (b) that, if the convicted person had been convicted of the offence in terms of this Act referred to in paragraph (a), the court would have been required to prohibit him from driving and additionally, or alternatively, would have been required to cancel his licence:

the court shall, when sentencing him for the offence at common law –

- (i) prohibit him from driving for a period that is no shorter than the period of prohibition that would have been ordered had he been convicted of the offence in terms of this Act referred to in paragraph (a) and
- (ii) cancel his licence, if the court would have cancelled his licence on convicting him of the offence in terms of this Act referred to in paragraph (a).”

In response the query I raised with him the learned magistrate had this to say:-

“I acknowledge receipt of your review minute dated 21 July 2015. I concede that under normal circumstances the conviction warranted a mandatory prohibition or cancellation of the accused’s driver’s licence. However, in the current case the accused is a holder of a foreign driver’s licence. I did not order the prohibition or cancellation as it cannot be effected in a foreign country. I took it that our local CVR cannot effect the mandatory prohibition or cancellation.”

What is clear from the above is that the magistrate just wrote the above response without finding out from the Act the definition of licence which reads as follows:

“Licence” means, save in section thirty-three, an internal licence or an international driving permit referred to in subsection (1) of section eighteen or a foreign driver’s licence”

The trial magistrate held the view that the offence that the accused was convicted of warranted the mandatory prohibition or cancellation of his driver’s licence. It was therefore, of no consequence what type of driver’s licence the convicted person held. Be it an internal licence, international driving permit, or foreign driver’s licence a prohibition and cancellation of the driver’s licence ought to have been imposed as required by law. The trial court should not concern itself with how Central Vehicle Registry executes its judgment. See *S v Mbewe* 1995 (2) ZLR 413.

While the sentence of \$400 or in default of payment 3 months imprisonment is confirmed the record of proceedings is returned to the trial court for it to recall the accused and afford him an opportunity to address it on special circumstances, if any, and thereafter deal with him as required by law.

Takuva J .....I agree