

THE STATE

Versus

NOSIAS MUDIMBA

IN THE HIGH COURT OF ZIMBABWE
DUBE-BANDA J
BULAWAYO 6 JULY 2022

Criminal review

DUBE-BANDA J:

1. This review is at the instance of the scrutinising Regional Magistrate. The accused was arraigned before the Magistrates' Court sitting at Western Commonage, Bulawayo. He was charged with two counts, count 1 being the crime of contravening section 6(1) and 6(5) of the Road Traffic Act [Chapter 13:11] (No driver's licence). It being alleged that on the 26 February 2022, and along Rangemore Road, opposite Pure Gas, in Tshabalala, Bulawayo, accused drove a motor vehicle without a driver's licence.
2. In count 2 he was charged with the crime of contravening section 52(2) of the Road Traffic Act [Chapter 13:11] (Negligent driving), it being alleged that on the 26 February 2022, and along Rangemore Road, opposite Pure Gas in Tshabalala, Bulawayo accused drove a motor vehicle negligently by hitting two juveniles who were crossing the road.
3. He was convicted on his own plea of guilty and sentenced in respect of count 1 to six months imprisonment of which three months were suspended on the usual conditions of good behaviour and a further three months suspended on conditions accused performs 105 hours of community service. In respect of count 2 he was sentenced to pay a fine of \$18 000 and on failure to pay, to three months imprisonment. In addition he was prohibited from driving all classes of motor vehicles for eight months.
4. Nothing turns on the conviction and sentence on count 1. However the Learned scrutinising Regional Magistrate took issue with the sentence on count 2. Cut to the bone

the observation was that the sentence to pay a fine of \$18 000 and on failure to pay to three months imprisonment was too lenient and trivialises an otherwise serious offence.

5. The facts are that the accused was driving a private vehicle i.e. a Toyota Hiace Registration Number AFQ 7361. He hit two pedestrians both aged seven years. One juvenile sustained general body injuries and was treated and discharged at Mpilo Hospital, and the other sustained serious injuries on the right leg and it was eventually amputated.

6. In *S v Ferreira* 1992 (1) ZLR 93 (S) it was held thus:

There is definite duty upon a motorist who knows himself to be in the near vicinity of young children, for they have a propensity for impulsive and sometimes irrational action. Children should not be credited with the same mature intelligence and presence of mind as grown up people. A motorist must anticipate that a child on or just next to the road may unexpectedly decide to run across oblivious of danger. He must keep his vehicle under such control as to be able to suddenly pull-up if a child starts to cross the line of his route. He must prepare himself for any eventuality. It has been aptly remarked that young children are “as wide as the road” and are liable to get into the way of a motorist without any warning. Thus greater care is demanded towards children than is necessary for the safety of adults.

7. My view is that an adult aged thirty seven years, driving a big motor vehicle (Toyota Hiace) without a driver’s licence is aggravating. He hit two children aged seven years old who were crossing the road. He was driving in a residential area and he admitted that he was driving at an excessive speed in the circumstances. The children suffered injuries, and one of them very serious injuries leading to the amputation of his leg. This is a bad case of negligent driving. I agree with the learned scrutinising Regional Magistrate that the sentence of a fine of \$18 000 and on failure to pay three months imprisonment is too lenient in the circumstances.

8. The trial court should have ensured that the accused was appropriately held accountable for his conduct. On the facts of this case the sentence imposed on the accused is a

mockery of justice. It is too lenient. This type of sentence does not engender confidence in the administration of justice.

9. I do not consider that the sentence imposed on count 2 is in accordance with real and substantial justice. I therefore withhold my certificate.

DUBE-BANDA J