

**THE STATE**

**Versus**

**EDINGTON BHEBHE**

IN THE HIGH COURT OF ZIMBABWE  
TAKUVA J  
BULAWAYO 8 SEPTEMBER 2023

**Criminal Review**

**TAKUVA J:** This matter was referred to the Registrar of this Court by the Resident Regional Magistrate Western Commonage Magistrates Court with the following comments;

“..... The accused was convicted on a charge of Contravening Section 49 (a) of the Criminal Law Codification and Reform Act Chapter 9:23 and he was not prohibited from driving as he was driving a public transport motor vehicle as is required in terms of section 52 (1) Road Traffic Act.

The issue was raised with the trial Magistrate because the Scrutinising Regional Magistrate was of the opinion that special circumstances did not exist and the trial Magistrate conceded to that finding which means accused was supposed to have been prohibited from driving for a certain number of months.

I hereby refer the record of proceedings for a corrective measure to be taken against the accused person ...”

When the record was placed before me I directed that the record of proceedings be transcribed and resubmitted as a matter of urgency. After perusing the transcript it became apparent that the court *a quo* had committed serious irregularities.

**FACTS**

On 27<sup>th</sup> day of June 2021, at approximately 1750 hours the accused was driving a privately owned motor vehicle namely a Toyota Hiace registration ADS 2863 along Masiyephambili drive due east with two passengers on board. The pedestrian Japhet Phiri was crossing Masiyephambili drive due north. At some point near Bellevue shops the accused person who was travelling at an excessive speed in the circumstances, hit the pedestrian who sustained fatal head injuries and died on the spot.

The postmortem report lists the cause of death as:

- (1) Hypovolemic Shock
- (2) Pulmonary Laceration
- (3) Road Traffic Accident

The particulars of negligence were listed as;

- (a) Fail to keep a proper look out
- (b) Fail to act or react reasonably when the accident seemed imminent
- (c) Travelling at an excessive speed in the circumstances

After accepting these particulars, the court returned a verdict of “guilty as charged.” The Public Prosecutor produced a Certificate of Previous Convictions showing that the accused was first offender. Further, the State indicated that the Investigating Officer said the vehicle that accused was driving was “a public service vehicle.” Next, the court *a quo* made the following comments;

“The offence you have been convicted of attracts a minimum mandatory prohibition from driving of 24 months. However, the court can depart from such a prohibition against you if you address it on whether or not there exist some peculiar circumstances to the commission of the offence. These are circumstances which are divorced from the general or ordinary day to day circumstances touching on the commission of the offence.”

The accused’s reply was couched in the following terms;

“The pedestrian was crossing the road at an undesignated crossing point. I hooted and swerved to the left side of the road to avoid him but instead of stopping he ran across the road. There was no way I could avoid him as he crossed unexpectedly.”

The court *a quo* accepted this explanation saying;

“The explanation provided by the accused constitutes special circumstances as the pedestrian was also negligent.” (the emphasis is mine) The accused was then invited to mitigate and he gave his personal circumstances in which he described himself as a “Kombi driver.”

I have no doubt in my mind that the trial court misdirected itself by making a finding that there were special circumstances *in casu*. The accused was supposed to have been prohibited from driving for a certain period. As regards the type of vehicle there is so much confusion in that the charge sheet and the outline of the state case, the motor vehicle is

described as a “private motor vehicle,” yet in the reasons for sentence the court said it was “a public service vehicle.”

As regards corrective measures, the provisions of section 65 (6) (8) of the Road Traffic Act could not be met due to the delay between the date of sentence and the date corrective measures could have been taken.

What is abundantly clear is that the court *a quo* committed gross irregularities in handling this matter.

In the result I am unable to certify these proceedings as having been in accordance with real and substantial justice.

Accordingly I with hold my certificate

Takuva J.....