

IRIMAI GOCHE
versus
THE STATE

HIGH COURT OF ZIMBABWE
MWAYERA & MUZENDA JJ
MUTARE, 5 February 2020 and 27 February 2020

Criminal Appeal

C N Mukwena, for the appellant
M Musarurwa, for the respondent

MUZENDA J: On 11 October 2019 the appellant was convicted of contravening s 53 (2) of the Road Traffic Act [*Chapter 13:11*] for reckless driving and was sentenced to 2 years imprisonment, in addition he was prohibited from driving commuter omnibuses or heavy vehicles for the rest of his life in term of s 54 (4) (a) (b), further appellant's licence was cancelled.

The appellant noted an appeal against both conviction and sentence. The state does not oppose the appeal in terms of s 35 of the High Court Act [*Chapter 7:06*] more particularly on the aspect of conviction. Having read the arguments presented before us by both counsel, we have the view that the concession by the state as against conviction was properly made and the conviction of the appellant for contravening s 53 (2) of the Road Traffic Act [*Chapter 13:11*] is set aside and substituted by a conviction for contravening s 52 (2) of the Road Traffic Act, that is for dangerous driving.

As regards sentence, the conviction of reckless driving has been set aside, this court is at large to interfere with the sentence of 2 years imprisonment. The act provides an option of a fine of level 10 or for imprisonment of 1 year or to both. The manner the appellant drove on the day in question exposed both passengers and human traffic to serious danger, it is fortunate that no one died on the day in question. The conviction of appellant for dangerous driving is equally serious and it is my considered view that a fine will meet the justice of the case when cumulatively taken with the imminent prohibition. In the result the following order is returned:

(a) Both appeals against conviction and sentence are upheld.

- (b) Accused is found guilty for contravening s 52 (2) of the Road Traffic Act [Chapter 13:11] dangerous driving.
- (c) RTGS 6000 or in default of payment 5 months imprisonment.
- (d) Accused is prohibited from driving class 1 and 2 motor vehicles for a period of 2 years.

MWAYERA J agrees _____

Chibaya & Partners, appellant's legal practitioners
National Prosecuting Authority, state's legal practitioners