THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

CRIMINAL APPEAL NO. 11 OF 2004

GICHOHI PAUL :: APPELLANT

Versus

UGANDA :: PROSECUTOR

BEFORE: HON. MR. JUSTICE V. A. R. RWAMISAZI-KAGABA

JUDGMENT

This judgment in appeal arises out of Criminal Case No.NAK-TO113/2004 (Nakawa Court) where the appellant was charged with and convicted of Careless or Inconsiderate use of a motor vehicle c/s 119 and S.46(b) of the Traffic and Road Safety Act 1998.. The particulars of the offence were that Gichohi Paul Mukwa on the 29/1/2003 at about 1815 hours at Ntinda Road in the District of Kampala did drive motor vehicle No. KAP 844E/26 6854, Fuel Tanker White Mercedez Benz on the road carelessly or without reasonable consideration to other road users in that he knocked one pedestrian Tabuzibwa Kusai Kasajius m/a 48 years who was at the road shoulder.

The accused was convicted on his own plea of guilty. He lodged an appeal against both conviction and sentence. He was represented on appeal by Mr. Dusman Kabega while the State was represented by Mulindwa Badru.

In his memorandum, of appeal Mr. Kabega raised two grounds. The first was that the sentence of 8 months was excessive, and second, the procedure of

recording the accused's plea of guilty was irregular and defective in law. He cited to me the case of Adan vrs Republic (1967) EA 445.

Mulindwa State Attorney said the appeal was incompetent because there is no appeal allowed. On Sentence, Mr. Mulindwa submitted the sentence was not harsh and that, the trial Magistrate has the discretion to award the sentence he deems fit in the circumstances of the case.

The objection of Mr. Mulindwa on the second ground may be disposed by reference to section204 of the Magistrate's Courts Act where it is provided:

(1)(a) An Appeal shall lie to he High Court by any person convicted on a trial by a Court presided over by a Chief Magistrate or Magistrate Grade 1.

(2) Any appeal under Sub-Section (1) may be on a matter of fact as well as on a matter of law.

(3) No appeal shall be allowed in the case of any person who has pleaded guilty and has been convicted on that plea by a Magistrate's Court except as to the legality of the plea or to the extent or legality of the sentence.

The appellant's appeal is therefore competent since it is about the legality of the plea and sentence. There is a conviction to be appealed against.

See: Karim Bagenda & 3 others vs. Uganda - Criminal Appeal 10/1994 (S.C.)

At the end of Counsel's submissions, I made an order allowing the appeal, quashing the conviction and sentence and set the appellant free there and then. I now give my reasons in support of the order I made.

It is trite law that the first appellate court has power and is under duty to scrutinise and evaluate the evidence of the lower court and arrive at its own conclusions bearing in mind that the trial court had the benefit of seeing the

witnesses in the witness box and of observing their demeanor, a benefit the appellate court doe not enjoy.

See(1) Pandya vrs. R. (1957) EA 335

(2) Okeno vrs. R. (1972) EA 32

(3) Bogere Charles vrs. Uganda - Criminal Appeal No. 7/1977 (C.A)

Section 124 of the Magistrates Courts Act lays down the procedure which should be followed when taking the plea of an accused person. The substance of the charge shall be stated to the accused and the accused shall be asked whether he admits or denies the charge. The reading of the charge to the accused necessitates translating the charge to the accused in the language he is best knowledgeable about if he is not versed with English, the language of the court.

See: Section 139 of the Magistrates Courts Act..

If he admits to the truth of the charge, a plea of guilty shall be recorded followed by the narration of the facts in support of the charge. The plea must be unequivocal. If he admits the facts in support of the charge are correct, then a conviction for the offence charged shall be entered. The sentensing the accused, now convict, follows and concludes the process.

This procedure has been applied in several cases, such as:

(1) Adam vrs. Republic (1973) EA 445

(2) Moses Umaru vrs. Uganda- Criminal Revision 12/1991

(3) Evaristo Turyahabwe vrs. Uganda

H. C. Criminal Appeal 12/2001

(V. R. Musoke-Kibuuka - Mbarara H. C.)

On perusal of he court proceedings, it was not shown whether the charge was translated to the accused for he simply said, "I have understood the charge. It is

true." The question that remains unanswered is "what was true? The words used by the accused could not be an admission of guilt.

Such blanket expressions as "I admit" "It is true" have been criticised as not amounting to an equivocal admission of the charge. The ingredients of the offence must be put to the accused and his admission on each ingredient recorded as closely to his own words as possible.

In Nakafunga vs. R. (1956-1957) 8 ULR. 151 Keatinge J. held, that where the accused pleaded "It is correct" It was found in my house "I admit" such expressions did not amount to an admission of guilt. The words used by the accused in this case are not far from the expressions used in the Nakafunga case, and for the same reasons, I find the accused's words do not amount to an admission of the facts in the charge.

In yet another irregularity, the trial Magistrate erred when he permitted the State to give more facts after the accused had admitted those given in support of the charge.

All the facts in support of the charge including the tendering of P.F. 3 should have been narrated together and then the accused asked if the facts are true. Thereafter, the Magistrate would then record a conviction if the accused admitted the facts as true. As if that is not enough, the trial Magistrate made an uncalled - for statement and before formally convicting the accused, when she remarked "He was reckless and had no regard to other road users". The effect of this statement is not an irregularity in procedure but it tends to exhibit bias in the mind of the trial Magistrate. That statement should have been made, if it were to be made, as part of the reasons for the sentence.

See: (1) Misango vrs. Republic (1969) EA 538

(2) Article 28(1) of the Constitution.

Every conviction should state the offence for which an accused person has been convicted and the provisions of the law under which the conviction is registered. If this is not done, the conviction is improper.

The other ground of appeal was that the sentence was harsh and excessive. The sentence provided under section 119 of Traffic and Road Safety Act is "a fine" not less than five currency points and not exceeding thirty currency points or imprisonment of not less than one month and not exceeding one year or both". Where the law provides for a fine as a sentence for a certain offence in the first place, with imprisonment either as a second option or in default of paying the fine, the convicted person must be sentensed to a fine with imprisonment in default of paying the fine.

If the Magistrate has to deviate from this order he/she should do so after giving strong reasons for doing so.

See also: Uganda vrs.Abdu Sendaula - Criminal Revision 3/1993 (Karokora J)

The sentencing power of the trial court will not be interfered with by the appellate Court unless that court (trial) has passed an illegal sentence or unless it is satisfied that the sentence imposed by the trial court is manifestly so excessive as to amount to an injustice.

See (1) Kyarimpa Edward vrs. Uganda - Criminal Appeal 10/1995 (S.C.)

(2) Stephen Batumba vrs. Uganda - Criminal Appeal 1/1995 (H.C.) (Kato J.)

The present case contains all the three vices committed by court in the sentencing process. The antecedents of the accused, such as his age, social background, family responsibility were not investigated.

Secondly the accused being a first offender who had pleaded guilty should have been treated more leniently.

Thirdly, there was no justification for the Chief Magistrate to deny the accused the sentence of a fine in the first place before condemning him to a prison term.

Fourthly, the trial Magistrate was carried away by irrelevant considerations and circumstances in order to justify the harsh and illegal sentence he imposed on the accused.

After considering all the irregularities and short commings in the proceedings of the trial court, I allow the appeal, set aside the conviction and sentence. The convict/accused was set free unless liable to be held further for some other lawful excuse.

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V. A. R. Rwamisazi-Kagaba

J u d g e

08/06/2004