

THE STATE  
versus  
SABAU

HIGH COURT OF ZIMBABWE  
PATEL & KUDYA JJ  
HARARE, 3 June 2010

### **Criminal Review**

PATEL J: The accused in this case was found guilty on his plea of guilty to a charge of negligent driving in contravention of section 52(2) of the Road Traffic Act [*Cap 13:11*]. The conviction is in order and is accordingly hereby confirmed.

### The Facts

The accused committed the offence whilst driving a commuter omnibus with five passengers on board. He collided into seven stationary vehicles, probably because of over-speeding combined with defective brakes. All of the vehicles involved were damaged but nobody was injured.

The accused is a 46 year old first offender and is married with four children. He is self-employed as a driver earning US\$40 per week. He has no savings but owns 5 bovines by way of valuable assets. He holds a driver's licence in respect of motor vehicles in Classes 2, 4 and 5.

The trial magistrate sentenced the accused to a fine of US\$200 or 1 month imprisonment in default of payment of the fine. The accused was further prohibited from driving motor vehicles in Classes 1 and 2 for a period of 2 years. His driver's licence in respect of Class 2 was also cancelled.

The learned Regional Magistrate who scrutinised this case is of the view that the accused should not have been prohibited from driving Class1 motor vehicles, as his driver's licence does not include that class, but that he should have been prohibited from driving motor vehicles in Classes 4 and 5 in addition to Class 2. In his response to the queries raised, the trial magistrate explained that he extended the prohibition to Class 1 motor vehicles because, if not so prohibited, the accused could have proceeded to obtain a Class 1 driver's licence, which would enable him to drive vehicles in all of the other classes, including Class 2, thereby defeating the object of the prohibition in respect of that class. As regards Classes 4 and 5, he did not extend the prohibition to those classes because the accused was convicted of an offence

involving a Class 2 vehicle and there was no need to prohibit him from driving motor vehicles in Classes 4 and 5.

### The Law

Section 52(4) of the Road Traffic Act provides for prohibition from driving upon conviction for negligent driving. In the case of a first driving offence, the court may prohibit the convicted person from driving for such period as it thinks fit. For a repeat driving offence, the court shall prohibit the convicted person from driving for such period as it thinks fit and cancel his licence in respect of motor vehicles of the class to which such prohibition from driving extends. In the case of an offence involving the driving of a commuter omnibus or a heavy vehicle, the court shall prohibit the person from driving for a period of not less than two years. However, the court may decline to impose the mandatory prohibition if it considers that there are special circumstances which justify so declining, in which event it must endorse such special circumstances on the record of the case when passing sentence. Section 52(1) defines the term “special circumstances” to mean “special circumstances surrounding the commission of the offence concerned, but does not include special circumstances peculiar to the offender”.

The provisions of section 52(4) are subject to Part IX of the Act, including section 65 which stipulates general provisions relating to prohibition. Section 65(1) provides that a prohibition from driving shall extend to all classes of motor vehicle. However, section 65(3) allows the court discretion to order that the prohibition shall not extend to such class of motor vehicle, other than the class to which the motor vehicle driven by the accused at the time of the commission of the offence belongs, as it thinks fit. In terms of section 65(5), where the accused is prohibited from driving for a period of twelve months or more or for consecutive periods which together amount to twelve months, the court shall cancel his driver’s licence in respect of all classes of motor vehicle to which such prohibition extends.

### Prohibition and Cancellation *in casu*

Turning to the instant case, the trial magistrate found (without conducting any specific inquiry into the question) that there were no special circumstances justifying the non-imposition of a prohibition from driving and then proceeded to impose such prohibition for a period of 2 years. In so doing, however, he limited the prohibition to

Classes 1 and 2. In my view, this approach is erroneous and misdirected in that it is the converse of what is contemplated by section 65(1) as read with section 65(3) of the Act. What the learned magistrate should have done is to impose the prohibition, in general, and then indicate the classes of motor vehicle to which the prohibition would not extend, in particular. Before so doing, he should have considered whether or not there were any special circumstances surrounding the commission of the offence which justified such non-extension and endorsed such special circumstances on the record, as prescribed in section 52(4).

As regards cancellation of the accused's driver's licence, section 65(5) of the Act requires that such cancellation be imposed in respect of all classes of motor vehicle to which the prohibition from driving extends. In other words, the coverage of cancellation must be co-extensive with the classes of motor vehicle to which the prohibition extends. Again, the learned magistrate appears to have misdirected himself by departing from this requirement.

#### Corrective Action

In the circumstances of this case, it is necessary that corrective action be taken at the earliest opportunity. This is specifically envisaged in section 65(6) of the Act, where prohibition from driving or cancellation of a licence is required to be imposed in terms of the Act, and the court for any reason does not prohibit the convicted person from driving or does not cancel his licence in respect of all or any of the classes of motor vehicles in respect of which it is required to be cancelled. In any such case, the court shall cause notice to be served on the convicted person directing him to appear before the court at the time and place specified in the notice to show cause why the prohibition or cancellation should not be imposed or the order should not be corrected, as the case may be. However, this procedure is subject to section 65(8) which precludes the service of such notice more than six months after the date of the conviction. (The accused *in casu* was convicted and sentenced on 3 and 3 February 2010 respectively).

In the premises, it is directed that this matter be remitted to the trial magistrate forthwith for him to institute the procedure enjoined by section 65(6) of the Act and to correct the sentence imposed in this case, in conformity with the guidelines set out in this review.

KUDYA J: I concur.