THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CRIMINAL SESSIONS CASE NO.4 OF 1992

FRED JINGO:: APPELLANT

VERSUS

UGANDA ::RESPONDENT

BEFORE; HONOURABLE MRS. JUSTICE KIREJU

JUDGEMENT

The appellant Fred Jingo, was convicted on his own plea of guilty to a charge of reckless driving contrary to S.118(1)(c)i138(2)(b) and 65(i)(a) of the Traffic and Road safety Act, 1970. He was sentenced to a 'fine of Shs.3, 000/= or in Default thereof 7 days imprisonment and in addition one month imprisonment and now appeals against sentence. The only ground of appeal was that the sentence passed is excessive in regard to all circumstances of the case. The memorandum of appeal ended with a prayer that the appeal be allowed and sentence set aside and a proper one substituted therefore. However, in his submission counsel for the appellant prayed that the appeal be allowed, sentence, set aside and the appellant set free forthwith. In support of the appeal counsel for the appellant contended that a fine of Shs.3, 000/= was enough and that the term of imprisonment should not have been imposed. He further contended that, the appellant 'was a first offender, he pleaded guilty and did not trouble court at all and that, there was no evidence that the offence the appellant committed Caused any injury or damage to anyone. That this was a simple traffic offence and a fine should have been enough.

He further submitted that in developed countries offenders are not sent to jail for simple traffic offences, that they are just fined. The limits of punishment set down in 138(2) (b) should be justified by the gravity of the offence that where someone is injured or killed, a sentence of a fine and custodial sentence would be proper. In conclusion he invited the court to set aside the

sentence and substitute it with a lesser one. That since the appellant had already spent 14 days in prison he should be released forthwith and that it was mere harassment to send someone to prison for a mere traffic offence.

Mr. Mabonga counsel for the state submitted that this not a simple traffic offence. The accused being a person of sound mind drove his vehicle at 8.00 a.m. on South Street (now Ben Kiwanuka Street) on the right side. of the road and he admitted it Bearing in mind the time the offence was committed, he drove without due regard to other road users. That he was correctly fined under s.138 of TRS act but that in order to deter him for reckless driving and other drivers this type he imposed a custodial sentence. The magistrate imposed custodial sentence because cases of recklessness are rampant. Counsel for the state further submitted that the magistrate did not cancel the driving permit of the accused as is required under s.65 (1) of TRS. That since the magistrate did not implement the mandatory provisions of S.65, that it cannot be said that the sentence was excessive. In conclusion he prayed that the sentence of the trial magistrate be upheld.

Mr. Lugayizi in reply contended that only in special **cases should a person be sent to prison for a traffic offence** especially in view of the overcrowding and the diseases found in our prisons. That it was only consistent that unnecessary cases should not be referred so easily to Luzira, I have gone through the memorandum of appeal, there record of the lower court and the submissions b both counsels my task now is to decide whether or not there is merit in the appeal. S.138 (2) (b) under which the appellant was sentenced is as follows,-

> ***"138****(2) (b) any person who is convicted of, an offence under section 117, 118 or 119 of this Act shall be liable to a fine of not less than one thousand two hundred and fifty shillings but not excessive of five thousand shillings or to a term imprisonment of not less than six months' but not exceeding two years or both."*

The issue to decide now is whether the sentence imposed by the magistrate was within the law. Counsel for the appellant's submission was that the sentence was **excessive** taking into consideration, the circumstance of the case. Counsel for the state's view was that the sentence **was** not excessive. My humble opinion is that the fine of Shs.3000/= was in contravention of

currency reform Statute no.2 of 1987. The magistrate should have struck off two zeros and remained with Shs.30/= .The magistrate did not address himself to this issue so he imposed an illegal fine of Shs 3000/=. The magistrate then proceeded to impose a deterrent sentence of one month. His reasons for sentencing from the record were;

> *"cases of recklessness are rampant this court cannot understand how on earth a person can drive on the right on South Street although the accused is a first offender who' guilty, I think a sentence of imprisonment in addition to the fine is appropriate in the circumstances. This will teach the accused a, lesson and other drivers who are reckless and drive without due care to other road users."*

It is clear from the above quotation that the purpose of imprisonment for one month was to teach the appellant a lesson and other reckless drivers, it was therefore a deterrent sentence. However, the term of imprisonment was below the minimum prescribed by law. The minimum term of imprisonment is supposed to be 6 months under S.138(2)(b) unless the court for special reasons think fit to impose a term of imprisonment less than the minimum term imprisonment specified. It is apparent from the record that the magistrate did not address himself t the issue of special reasons as required by the law. The sentence of imprisonment for one month was therefore defective as the proper procedure was not followed when imposing it. If the magistrate had followed the proper procedure in imposing a term of imprisonment for one month this term would not have been excessive, considering the gravity of this particular case. It was just sheer luck that no accident resulted from the accused's reckless driving, the magistrate also did not make an order under s.65 (1) (a) of TRS Act. This section provides as follows;

> *"any court before which a person is convicted of a first offence and sections 116,117,118,119 and Para C of section 128 of this Act shall cancel such person's driving permit for a period of not less than three years and shall declare that person to be disqualified from obtaining a driving permit of any type for the stated period.*
>
> Unless the court for special reasons thinks fit to order a shorter period of disqualification ..... or not to order him to be disqualified."

This provision is mandatory once someone is convicted under S.118 of TR Act unless for special reasons the court decides to reduce the period of disqualification or not to order him not to be disqualified. It is clear from the record in the lower court that the magistrate did not consider the special reasons before deciding not to impose the mandatory disqualification under the Act. The special reasons are supposed to be put forward by the accused but in this case he was not asked to do so. The learned trial magistrate therefore erred in not following the proper procedure before arriving, at his decision. Before I deliver my final decision in respect of this case I would like to state that the rate of accidents have increased to alarming numbers on our roads and everyone is anxious that something is done to the people who cause these accidents. But it is also important that we should not lose sight of our law when dealing with these cases. Perhaps what the law reformers should do is to look at the laws and effect the necessary amendments so that they are up to-date with changes which take place.

Counsel for the appellant contended that in developed countries people who commit simple traffic offences are; just fined no imprisonment term is imposed. I think with due respect to counsel, it is not fair to compare our situation to developed countries because we happen to fall in the category of undeveloped countries and our problems are different from those of the developed countries and we are still bound by our laws.

Counsel also contends that because of the poor prison conditions the courts should not be fast at handing down prison sentence especially simple traffic offences. Again with due respect to learned counsel I do not think that when passing out sentence the court should address itself to the legal requirements to be considered when sentencing.

In arriving at the following decision which I follow have been greatly assisted by the following cases

1. Uganda v Mayombwe 1973 EA 566
2. John v Uganda Crim.App.no 40/91
3. Serunjoji Buluhane v Uganda Crim.App no.53/91
4. Nathan Kigozi v Uganda Crim App.no.70/91

In conclusion I find that this case was handled anxiously by the trial court and as result important points of law were over looked ,first fine of 3000/= was excessive as it exceeded the ridiculous maximum of shs.50/= provided by the law.

The fine is therefore illegal the fine of 30/= is substituted for that Shs 3000/= and the 2970/= should be refunded to the appellant. The one month imprisonment was also not properly imposed as the proper procedure provided by law was not followed.

The term of one month imprisonment is therefore set aside if he is corrigible the period he has already spent in prison should have the desired effect. I shall make no order in respect of s.65(1)(a)is the only thing to do would be to send the appellant back to the magistrates court in order to comply with the requirements under the section. I am of the opinion that the appellant has already gone through enough and should have learned his lesson.

For the reasons given above this appeal succeeds. The applicant to be released forth with

KIREJU

11/2/1992