

THE STATE
versus
DOMINIC MACHINGURA

HIGH COURT OF ZIMBABWE
MAWADZE, DUBE JJ
HARARE, 02 January 2015

Review judgement

DUBE J: The accused appeared before the trial magistrate facing a charge of contravening s 52(2) of the Road Traffic Act, that is driving a motor vehicle, namely a Toyota Hiace negligently. The state allegations are that the accused reversed and collided with the complainant's vehicle.

The accused was convicted of the offence and sentenced to 12 months imprisonment of which 4 months imprisonment was suspended for 5 years on conditions. He was prohibited from driving commuter omnibuses and heavy vehicles for 2 years and his licence cancelled.

When essential elements were being put, the accused admitted to driving a Toyota Hiace negligently. The charge sheet and State outline do not suggest that the vehicle in issue was a public service vehicle. Nowhere during the proceedings did the accused acknowledge that he had been driving a public service. The suggestion that this vehicle was a public service vehicle came from the magistrate in her explanation of special circumstances. The accused person was unrepresented and the assertion went unchallenged.

In any case where a person drives a public service vehicle and an accident ensues as a result of such driving, a specific allegation should be made to that effect in the state papers. It is not good enough for the magistrate to suggest to the accused drove a public service vehicle in the absence of such an allegation from the state. The trial magistrate surmised that the vehicle was a public service vehicle. Such a suggestion should have been put to the accused person when essential elements were being canvassed. Such a suggestion should emerge from state papers. It does not follow that because the vehicle he drove was a Toyota Hiace or for that matter a commuter omnibus, that the said vehicle is a public service vehicle. It could well have been a private vehicle. The magistrate's conclusion was erroneous.

As regards sentence, it is clear that the magistrate proceeded from the premise that the accused was driving a public service vehicle. This is an ordinary case of negligence. I am of the view that a sentence of fine \$400 will have met the justice of the case coupled with an order prohibiting the accused from driving and cancellation of the accused's licence.

The court had considered that the accused has served over a month of his sentence. That sentence suffices, the accused is released immediately from custody.

MAWADZE J agrees