

TAURAYI MAURUKIRA  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
MANGOTA AND TAGU JJ  
HARARE, 26 November 2014 and 15 January 2015

### **Criminal Appeal**

*T. Tandi*, for the appellant  
*Ms F. Kachidza*, for the respondent

TAGU J: This is an appeal against the decision of the magistrate who, after convicting the appellant on a crime of contravening s 52 (2) of the Road Traffic Act [*Cap 13:11*], sentenced the appellant to 8 years imprisonment, of which 5 years imprisonment were suspended for 5 years on condition that the appellant does not commit any offence involving negligent driving. The remainder of the sentence was suspended on condition the appellant performs community service at Harare Polytechnic College. Further, the appellant's Drivers Licence was sent for endorsement.

The appellant was not satisfied with both the conviction and sentence. He accordingly noted an appeal with this Honourable Court.

At the hearing of the appeal, and after hearing submissions from Mr *Tandi*, for the appellant, Ms *F. Kachidza* for the respondent, abandoned her opposition. Ms *Kachidza* conceded that the appeal had merit and submitted that it be granted. In our view the concession by Ms *Kachidza* was well made.

We were of the unanimous view that the sketch plan which is at p 36 of the record of proceedings shows that it was the second party (complainant) who hit the first party (appellant)'s car.

Further, it appeared clearly that as one drives due west towards Dzivarasekwa from Harare town, each party was driving on his own lane. This portion of the road is a one- way

with two lanes. The second party (complainant) was on the left outer lane in front of the first party. The first party (appellant) was travelling behind, and was in the inner right lane. Both parties were going in the same direction. The second party (complainant) then turned right and rammed into the appellant's car which was travelling in a straight direction.

Point 'x2' which the appellant says was the point of impact, as evidenced by motor vehicle debris, shows that as the real point of impact. The point clearly shows that the complainant had gone past the turn off into the unmarked road when the accident occurred. It does not support the complainant's view that he was turning right into an unmarked road. Further, point "x" which was recorded as the probable point of impact has nothing which supports that proposition as the cars' debris are at "x2" and not at "x".

To complicate matters, the other party Tendayi Blessing Mupezweni (complainant), stated in his evidence-in-chief at p 13 of the record that prior to the accident, he indicated that he was turning to the left when he was hit on the driver's door and got injured. There is no turn-off to the left at the scene of the accident. The damages which he sustained were not consistent with the driver or a car which was turning left but right. When confronted with this evidence, he changed in the course of his evidence -in-chief, and stated that he was turning right. He further, admitted that the statement taken by the police at the scene was taken from his relative and not from him. He had already been taken to Hospital. The question to be asked is who was then driving his vehicle? Was it the complainant or his relative as recorded in the traffic accident book? In our view given the above inconsistencies, the appellant should not have been convicted. The trial court should have found the appellant not guilty and acquitted him. It is for these reasons that we are in agreement with the concession made by the respondent.

In the result, the appeal is allowed. The conviction is quashed and the sentence set aside. The appellant is found not guilty and is acquitted of the charge.

MANGOTA agrees.....

*Kantor & Immerman*, appellant's legal practitioners  
*Prosecutor – General's Office*, respondent's legal practitioners.