

**IN THE CIRCUIT COURT HELD AT BOLGATANGA IN THE UPPER EAST
REGION OF GHANA ON THURSDAY THE 22ND DAY OF DECEMBER, 2022
BEFORE HIS HONOUR SUMAILA MBACHE AHMADU CIRCUIT COURT JUDGE**

CASE NO; UB/BG/CT B18/18/2023.

THE REPUBLIC

VRS.

MARK ALIDU

JUDGMENT

The Accused is charged with seven counts; three counts on Dangerous Driving contrary to section 1(c) of the Road Traffic (AMENDMENT) Act 2008 [ACT 761], three counts on Negligently Causing Harm; contrary to section 72 of the criminal offences Act 1960 [ACT 29] and one count of Driving without a valid Driving License, contrary to section 53(1) and (2) of the Road Traffic (AMENDMENT) ACT 2008[ACT 761] which the accused has pleaded guilty and dealt with.

THE CASE OF THE PROSECUTION

On 07/02/2021, at 1015 hours, Accused Mark Alidu, a male adult of 40 years old, was driving a Toyota echo saloon car no, GE 2997Z, from the Bolgatanga township towards Zuarungu. On reaching a section of the road just a few meters after the Ghana National Fire Service junction, whilst he was swerving a motorcyclist who suddenly crossed him from the near side to the offside, he veered off from his lane and collided with a Bajaj tricycle no. M-20-US 1056, being ridden by Atanga Ayinebisa from the opposite direction. Both accused and the rider as well as Mbugre Mercy who was in the tricycle with her six month old daughter by name Ismad Mbugre who sustained injuries and were rushed to the Bolgatanga regional hospital for medical treatment Ismad Mbugre

was pronounced dead and Mbugre Mercy was referred to Bawku Presbyterian hospital together with one Rita Teni Abedana for further treatment. Mbugre Mercys left leg was amputated and Rita Teni Abedana died later at the said hospital.

The prosecution called two witnesses in support their case, Mbugre Mercy and the police investigator who all gave chilling account of the gory incident. The investigator also put in evidence the investigating caution statement and charged statement of accused as exhibit A and B respectively. Also exhibited are, a sketch of the scene, and registration particulars of accused vehicle, postmortem physical examination report and vehicle examination report.

THE CASE OF THE DEFENCE.

The accused in his evidence denied being the cause of the crash and that it was purely an accident. He says it was a Sunday morning and he was on the way home and on reaching the fire service junction a motorbike crossed him which he swerved and that the Can do also appeared before him which he again swerved to one side and there the Can do crossed him yet again and the crush occurred. That he has supported the victims through his relatives.

BURDEN OF PROOF.

Section 11(2)of NRCD 323- In a criminal action the of producing evidence , when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt.

Ingredients of Dangerous Driving.;

- (a) The accused person must have been the driver,
- (b)The accused person drives below what is expected of a competent and careful driver,

or it is obvious to a competent and careful driver that it would be dangerous driving the vehicle ;in that manner , or in its current state.(c) The occurrence of death.

Ingredients of negligently causing Harm. (a) The accused person have been negligent and (b) unlawfully causes harm to other person.

ANALYSIS AND APPLICATION OF THE LAW.

Counts one, two and three on dangerous driving; contrary to section 1(c)of the road traffic(AMENDMENT) act 2004(act 761) as amended and counts; four, five and six, which are all on negligently causing harm; contrary to section 72 of ACT, 1960(ACT29) violates the rule against MULTIPLICITY. In the case of THE STATE OF NEW JERSEY V. GERALD HILL-WHITE. The principal issue before the court was whether the prosecution violated the rule against multiplicity. When it charged the defendant with multiple counts of arson based the number of victims endangered by one fire. The court states; we reverse all but one of arson convictions, because the state violated the rule against multiplicity, where a defendant (sets one fire) it is improper for the state to charge that defendant with multiple counts of arson based on the number of victims who were endangered by the fire. The state addresses the harm by charging the defendant with aggravated assault, attempted murder, or other applicable offenses in addition to the arson count.

In the instant case of (one crash), it is improper to charge the accused person with multiple counts of dangerous driving and Negligently Causing Harm. It clearly violates the rule against multiplicity as shown in the case supra, as to say the accused dangerously drove and negligently caused harm to the victims on separate occasions. Double jeopardy will occasion the accused if all the six counts are allowed to stand. I hereby struck out counts two, three, five and six and factor in the victims therein into counts one and four respectively

Dangerous driving; contrary to Section 1(c) of road traffic (amendment) Act 761 (ACT 761) states; where death occurs to a person other the driver. A term of imprisonment of not less than three years and not more than seven years. From the evidence adduced before this court I found it proven that the accused person was speeding beyond the required speed limit of 30kph in a buildup area resulting in the accident. From the evidence two persons died as a result of the accident; six months old Ismad Mbugre and Rita Teni Abedana.

A person who negligently and unlawfully causes harm to any other person commits a misdemeanor, **Section 72 act 1960 Act 29**. The accused person per section 53(1) and (2) presence on the road driving a vehicle without license is unlawful, and in this unlawful activity caused harm to other persons as captured in the evidence clearly cannot escape blame. On the ingredient of negligence, the case of **THE STATE V. KWAKU NKYI [1962]1GLR 197 at 198 holding 2, states;** In order to found criminal liability based negligence must be gross and must pass beyond a mere matter of carelessness and show such disregard for life and safety as to amount to a crime against the state. In the instant case, this disregard for life and safety arises the moment the accused person without the required license sat behind the steering wheel and drove the vehicle onto the road, which is a crime against the state.

From analysis above I hereby convict the accused person on both counts.

Accused is sentence to 3 years imprisonment on count one and to pay fine of 500 penalty units in default 3 years in prison custody on count four to run concurrently. I further order compensation of 20,000 Ghana Cedis in favour of the surviving victim MBUGRE MERCY.

