

**IN THE CIRCUIT COURT HELD AT KWABENYA ON MONDAY 16<sup>TH</sup>**  
**OCTOBER, 2023 BEFORE HER HONOUR MAWUSI BEDJRAH,**  
**CIRCUIT JUDGE**  
**CASE NO. B14/02/2022**

**THE REPUBLIC**

**VRs**

**EBENEZER QUAINOO**

**ACCUSED PRESENT**

**CHIEF INSPECTOR GERSHON TOGBE**

**ACHONDO FOR PROSECUTION**

**PRESENT**

**COUNSEL FOR ACCUSED PERSON DANIEL ADJEI**

**PRESENT**

**JUDGMENT**

Accused was charged with the offence of dangerous driving contrary to section 1 of the Road Traffic Act, 2004 (Act 683) as amended by the Road Traffic (Amendment) Act, 2008 (Act 761).

He pleaded not guilty to the charge.

**FACTS**

The brief facts as relayed by prosecution is that on 11<sup>th</sup> February 2016 about 8 a.m., accused driver Ebenezer Quainoo was in charge of a Kia Rhino Truck with registration number GT 6668-12 from Adjiringanor towards American House. On reaching a section of a narrow road at a junction within the Adjiringanor Township near the Methodist Church, he failed to give way to an oncoming cyclist named Daniel Yeboah, aged eleven (11) years, now deceased. In the process, the back tyre of the truck hit the front tyre of the bicycle and as a result, the back tyre of the truck run over him killing him instantly. A duplicate docket was prepared and sent to the Attorney General for advice. The advice from the Attorney General's office was later received indicating that accused driver should be charged with the offence of dangerous driving contrary to section 1(c) of the Road Traffic Act 683/04 as amended by Road Traffic Act 761/08. He was charged with the road traffic offence to appear before this honourable court.

## **BURDEN OF PROOF**

In a criminal trial the prosecution bears the burden to prove the guilt of accused beyond reasonable doubt as required by section 11(2) of the Evidence Act, 1975 (NRCD 323). Accused only has to raise reasonable doubt concerning his guilt as required by Section 11(3) of NRCD 323.

In the case of **JOHNSON v THE REPUBLIC** [2011] 34 GMJ 68 @ at 93 SC; Dotse JSC noted as follows:

‘Our system of criminal justice is predicated on the principle of the prosecution proving the facts in issue against an accused person beyond reasonable doubt. This has been held in several cases to mean that whenever any doubt exists in the mind of the court which has the potential to result in substantial miscarriage of justice, those doubts must be resolved in favour of the accused’

However, that doubt must be real and substantial and not fanciful to defeat the course of justice.

## **EVIDENCE OF PROSECUTION**

Prosecution called one witness to testify on its behalf, the investigator in the case, (No. 1510 Chief Inspector Mercy Arhu). Prosecution also tendered the following documents;

- i. The investigative cautioned statement of accused as Ex ‘A’
- ii. A sketch taken at the scene of the accident as Ex ‘B’
- iii. The Driver and Vehicle Licensing Authority’s Accident Report as Ex ‘C’
- iv. The charged statement of accused as Ex ‘D’

At the close of the case for prosecution, the court found a genuine case for trial and invited the accused to open his defence.

## **EVIDENCE OF ACCUSED**

Accused, who works with MJ Grande Hotel as a driver, based his defence on his witness statement filed on 03-07-2023. In summary, his evidence is that on 11<sup>th</sup> February 2017, on his way back from his normal routine, as he negotiated the turn onto an alley on his left towards the Adjiringanor Township near the Methodist Church, he saw a cyclist approaching on the left side of the road. Knowing his vehicle was large, he actually drove more to the right to allow the cyclist more room to use and go past him, which he did without any difficulty. Just as the cyclist went past and within a few seconds, he heard a sound as if his car had been hit by something at the back. He stopped immediately and checked his back to

see what had happened, only to find that the deceased had used the front tyre of the bicycle to hit the back tyre of the truck. He quickly rushed out to check on the rider, only to find out that the rider had fallen under the truck unconscious.

Accused also provided an expert witness, Engineer Maxwell Kwenchin Mensah. He is the Head of Roads Department, Yilo Krobo Municipal Assembly and has about fifteen (15) years' working experience with the Department of Urban Roads. He testified to a report he prepared and filed in respect of the accident, which was accepted by the Court as Exhibit '1'.

Counsel for the accused filed an address for and on behalf of the accused on 25<sup>th</sup> August, 2023, which has been considered in this judgment.

### **INGREDIENTS OF THE OFFENCE AND ANALYSIS**

Section 2(1) of the Road Traffic Act, 2004 (Act 683) states that a person drives dangerously if:

- (a) The way that person drives falls below what is expected of a competent and a careful driver or
- (b) It is obvious to a competent and careful driver that it would be dangerous driving the vehicle (i) in that manner or (ii) in its current state.

In effect, prosecution has the burden to demonstrate that the manner accused drove the vehicle was below the standard expected of a competent and a careful driver under the circumstance. In other words, the test here is, was there the exercise of a degree of care and attention, which a reasonable and prudent driver would do in that circumstance?

Further, per section 2 (2) of Act 683, in determining what is expected of, or obvious to, a competent and careful driver in any particular case, regard shall be had to the following;

- i. the circumstances of which the accused could be expected to be aware
- ii. any circumstances shown to have been within the knowledge of the accused, and
- iii. the conditions of the road at the relevant time.

The evidence before the Court is that the road where the accident occurred is an alley, thus a narrow passageway between buildings. The fact that the accused was the one who was driving the truck, GT 6668-12, at the time of the accident is not in dispute. Further that the truck, GT 6668-12, was the one involved in the

accident is also not in contention. The fact also that death occurred is not in issue at all.

The critical matter to be determined by this Court then, is whether the way that the accused drove the vehicle fell below what is expected of a competent and a careful driver or whether it would be obvious to a competent and careful driver that it would be dangerous driving the vehicle and in that manner.

Per Exhibit 'C', the brakes, steering, suspension, transmission, electrical and tyres of the truck were in a good working order prior to the accident. In effect, it was not dangerous to drive the vehicle at the time. In which manner then, was the vehicle driven?

According to the facts given by prosecution, accused failed to give way to the oncoming cyclist, which was substantiated by the accident report. In the process, the back tyre of the truck hit the front tyre of the bicycle and as a result, the back tyre of the truck ran over him, killing him instantly. Accused on the other hand states that he saw the cyclist approaching and actually drove more to the right to allow the cyclist more room to use and go past him, which he did without any difficulty.

I have noted that Exhibit 'B' as tendered by prosecution has been signed by the accused as required. I have further noted that Exhibit 'B' as tendered by prosecution and Exhibit '1' as tendered by the expert witness on behalf of the accused, speak to the same thing, except for the point of impact. Whilst prosecution describes the point of impact as 6.1 metres from the junction, the expert describes the point of impact as 35.8 metres from the junction. Additionally, the expert tells the Court that his assessment was to see if there was enough space for both the truck and the bicycle to pass each other safely and the dimensions show as such, which was not successfully challenged by prosecution.

I find that accused has been consistent in his defence, thus raising reasonable doubts in the evidence of prosecution. The doubts raised by accused are real and substantial and not fanciful to defeat the course of justice. This is a matter in which prosecution could have called more witnesses, particularly when their only witness appeared not to be in full control of the case. Thus, the Court cannot come to a conclusion, on the totality of the evidence before it that accused drove the vehicle dangerously. The fact that there was an accident would not mean that the accused drove the vehicle dangerously.

(See the case of **THE REPUBLIC vs. ABRAHAM NKONU** [2017] DLHC 11601, in respect of Count 2.)

I find that the accused did not drive the vehicle below what is expected of a competent and a careful driver. I accordingly acquit the accused on the charge levelled against him.

**Her Honour Mawusi Bedjrah**