

STATE
versus
GERALD MANGWENYAMA

HIGH COURT OF ZIMBABWE
MAWADZE & MUREMBA JJ
HARARE; 20 MAY 2025

Criminal Review

MUREMBA J:

1. The accused was charged with and convicted of reckless driving as defined in Section 53(2) of the Road Traffic Act [*Chapter 13:11*] (the RTA). He pleaded guilty to the charge and was sentenced as follows:

“USD 450.00 IDP 4 months imprisonment. In addition, the accused is prohibited from driving all motor vehicles which fall under class 4 vehicles for a period of 6 months. Furthermore, the accused is ordered to surrender his driver’s licence to the Clerk of Court Mbare within 7 days of this sentence for endorsement with particulars of this conviction.”

2. The accused was charged and convicted on the basis that he drove his motor vehicle, a Honda Fit, against oncoming traffic in the morning while rushing to work. His explanation was that he was running late. The conviction itself is proper and confirmed. Given that the accused was not involved in an accident and that no one was injured as a result of his reckless driving, the sentence of USD 450.00 fine with an alternative of 4 months' imprisonment is deemed adequate and appropriate under the circumstances.
3. However, I am concerned about the narrow scope of the driving prohibition imposed on the accused who holds a Class 2, Class 4, and Class 5 licence. The trial magistrate only prohibited him from driving Class 4 motor vehicles, leaving him free to continue operating Class 2 and Class 5 vehicles. Class 5 vehicles include tractors and construction machinery while Class 2 vehicles include heavy vehicles and commuter omnibuses which are larger passenger vehicles. The accused will also continue to drive motorcycles which fall in Class 3 that he is allowed to drive by virtue of being a Class 4 licence holder. The driving prohibition on Class 4 vehicles only further means that nothing prevents the accused from acquiring a Class 1 licence during the prohibition period and legally drive buses.

4. Reckless driving is a serious offence that affects road safety, regardless of vehicle type. The purpose of imposing driving prohibitions, is to deter further reckless behaviour and ensure responsible driving across all categories of vehicles. Allowing an offender to continue driving certain vehicles undermines the purpose of the restriction. Besides, allowing him to continue driving larger vehicles while barring him from light vehicles contradicts the logic of public safety enforcement and effective deterrence. Class 2 and Class 1 vehicles pose even greater risks than Class 4 due to their size and capacity. Besides, they involve the carrying of passengers. Such an offender can put the lives of passengers at risk.
5. While motorcycles in Class 3 are lighter than Class 4 vehicles, they require specialized handling skills and heightened attention to safety. They are high-risk vehicles with greater exposure to accidents due to their maneuverability and lack of structural protection. Allowing someone convicted of reckless driving to operate a motorcycle introduces a serious safety concern. A reckless driver operating a tractor which falls under Class 5 could still pose risks to other people such as pedestrians and workers.
6. In his sentencing judgment the trial magistrate did not explain why he chose to prohibit the accused from driving Class 4 vehicles only. The record of proceedings is completely silent on the issue. The question is: was it proper for the magistrate not to prohibit the accused from driving other classes of motor vehicles without justifying? To answer this question, it is necessary to examine the legal provisions in the RTA that provide for prohibition from driving following a conviction of reckless driving under s 53(2). The relevant legal provision governing such prohibitions is Section 53(4) of the RTA, which states:

53(4) “Subject to Part IX, a court which convicts a person of an offence in terms of subsection (1) involving the driving of a motor vehicle shall—

(a) if the person has not previously been convicted of a similar offence within a period of ten years immediately preceding the date of such first-mentioned conviction—

(i) in the case of a first-mentioned conviction which does not relate to the driving of a commuter omnibus or a heavy vehicle, **prohibit the person from driving for a period of not less than six months;** or

(ii) in the case of a first-mentioned conviction which does relate to the driving of a commuter omni bus or a heavy vehicle, prohibit the person from driving—

A. a motor vehicle other than a commuter omnibus or a heavy vehicle for a period of not less than six months; and

B. a commuter omnibus or a heavy vehicle during his lifetime.”

7. This provision states that it is "subject to" Part 1X of the same Act. This means that the application of s 53(4) is dependent on or limited by the provisions in Part 1X. In other words, s 53(4) must be read and applied in accordance with the conditions, restrictions, or exceptions set out in Part 1X. The practical implication is that the referenced Part 1X takes precedence over s 53(4) that is "subject to" it. Any action or interpretation under s 53(4) must align with the requirements of Part 1X.
8. As section 53(4) stands (without looking at Part 1X), it sets out the mandatory driving prohibitions that a court must impose upon conviction for an offence related to driving a motor vehicle. It applies only if the convicted person has not previously been convicted of a similar offence within the last ten years before the current conviction. Upon conviction, the court must impose a prohibition based on the type of vehicle involved in the offence. The provision provides that if the offence does NOT involve a commuter omnibus or a heavy vehicle, the convicted person must be prohibited from driving for a minimum period of six months. If the offence does involve a commuter omnibus or a heavy vehicle, the convicted person is subject to two prohibitions: Firstly, a prohibition from driving (except a commuter omnibus or heavy vehicle) for at least six months. Secondly, a lifetime prohibition from driving a commuter omnibus or a heavy vehicle.
9. The part of the provision which is relevant for this case says,

"In the case of a first-mentioned conviction which does not relate to the driving of a commuter omnibus or a heavy vehicle, prohibit the person from driving for a period of not less than six months."

The key phrase is: "...*prohibit the person from driving for a period of not less than six months.*" This language does not specify that the prohibition applies only to particular classes of vehicles. Instead, it sets a general rule that the person is prohibited from driving. The impression given is that the person is prohibited from driving altogether, meaning all classes of motor vehicles should be included in the restriction. The provision does not explicitly grant the court discretion to choose which classes of motor vehicles to prohibit. Therefore, *prima facie*, the correct interpretation would be that the prohibition should apply to all vehicle classes, for at least six months.

10. Since s 53(4) is subject to Part 1X of the Act, it is necessary to turn to Part 1X and examine what it says. Under this Part, s 65 is the pertinent provision. The section provides general provisions relating to prohibition from driving. I noted that the trial magistrate made no reference to it in the entire proceedings, an indication that he did not refer to it despite it being mentioned in s 53(4). It reads,

“65 General provisions relating to prohibition from driving

(1) Subject to this section and of sections *fifty-three, fifty-four, fifty-five* and *seventy-eight*, a prohibition from driving shall extend to all classes of motor vehicle.

(2) Subject to subsection (4), where a magistrate in terms of section *sixty-two or sixty-three* prohibits a person from driving, he may order that such prohibition shall not extend—

(a) to such class of motor vehicle; or

(b) to any motor vehicle which is adapted, constructed or equipped in such manner; as he thinks fit.

(3) Where a court, having convicted a person of an offence in terms of this Act or any other law, prohibits that person from driving, it may order that such prohibition shall not extend to such class of motor vehicle, other than the class to which the motor vehicle driven or attempted to be driven by the person at the time of the commission of the offence belongs, as it thinks fit.

Provided that this subsection shall not apply to a prohibition from driving imposed in terms of subsection (2) of section sixty-four A.”

11. Subsection (1) establishes a general rule that when a court imposes a driving prohibition, it applies to all classes of motor vehicles—meaning the person is banned from driving any type of vehicle. However, the phrase "*subject to this section and sections 53, 54, 55, and 78*" means that there are exceptions or conditions outlined in those sections that may modify or limit the prohibition. These referenced sections provide circumstances where the prohibition may not apply to certain vehicle classes. Essentially, the default rule is a complete driving ban, but the court must consider the provisions in the referenced sections before making a final decision.
12. Subsection 2 is an exception to the general rule that a driving prohibition extends to all vehicle classes. This provision gives a magistrate the power to limit a driving prohibition in certain cases. If a magistrate bans someone from driving under section 62 or 63, they can decide that the ban does not apply to: (i) certain types of vehicles (e.g., allowing the person to drive motorcycles but not cars); and (ii) specially adapted vehicles (e.g., vehicles modified for disabled drivers). This means the magistrate has flexibility to tailor the driving ban based on the circumstances, rather than imposing a

blanket prohibition on all vehicle types. This discretion is subject to subsection (4), which likely sets additional conditions or limitations. However, this exception under subsection 2 does not apply to the present case because the accused was not banned from driving under s 62 or 63 but under s 53 of the Act.

13. Subsection (3) provides additional discretionary power. This provision allows a court to impose a driving prohibition on a convicted person but also gives it discretion to limit the ban to certain vehicle classes. The general rule is that if a person is convicted of an offence under this Act or any other law, the court can prohibit them from driving. However, the court may allow the person to continue driving certain classes of vehicles, except the class of vehicle they were driving or attempting to drive when the offence occurred. The key restriction is that the court cannot allow the person to continue driving the same class of vehicle involved in the offence. However, this subsection does not apply to prohibitions imposed under section 64A (2), meaning that in cases covered by that section, the court must impose a full prohibition without exceptions. The subsection, i.e. subsection 3 of s 65, is applicable in the present case since the accused was convicted of an offence under the Road Traffic Act. Clearly, the provision ensures flexibility in sentencing while maintaining public safety as it prevents offenders from continuing to drive the same type of vehicle in which they committed the offence.

14. The word "may" used in subsection 3 indicates that the court has discretion to allow the convicted person to continue driving certain classes of motor vehicles, but it is not obligated to do so. This means that the court can choose to limit the prohibition to certain vehicle classes, but it is not required to do so. If the court decides to allow exceptions, it must determine which vehicle classes the prohibition should not extend to. The decision is made case by case, based on the circumstances and what the court thinks is appropriate. In *S v Sabau* HH 110/10 this court held that;

“Section 65(1) provides that a prohibition from driving shall extend to all classes of motor vehicle. However, section 65(3) allows the court discretion to order that the prohibition shall not extend to such class of motor vehicle, other than the class to which the motor vehicle driven by the accused at the time of the commission of the offence belongs, as it thinks fit.”

15. The legal interpretation of section 65(1) and 65(3), in the context of reckless driving prohibitions under section 53(4), therefore establishes that driving bans should

generally apply to all motor vehicle classes. Courts may grant exceptions but must provide justification, ensuring alignment with public safety principles. Prohibitions should be comprehensive unless a compelling reason supports partial exclusions. Any such limitation must be carefully assessed to prevent offenders from exploiting legal loopholes, such as obtaining new licences or switching to riskier vehicle types.

16. In *S v Chinoda* HMA 29/23 at page 4-5 MAWADZE J (as he then was) said,

“The discretion to limit the prohibition order from driving to the class of motor vehicle the accused was driving and not to all other classes of motor vehicles should be exercised judiciously. In practical terms cogent reasons should be given for the decision taken. It cannot be done capriciously. Thus, the reasons for sentence of the court *a quo* should address this issue in specific terms. In casu the accused was driving an omnibus and was prohibited from driving class 2 motor vehicles only. No specific reasons are given as to why the prohibition was not extended to other classes of motor vehicles. The reasons for sentence are silent on this. The trial Magistrate did not lay bare his or her reasoning process in the exercise of such discretion. The reason or reasons thereof remained safely stored in the mind of the trial Magistrate. The exercise of the discretion is unexplained.”

17. The above case reinforces the principle that any decision to exempt certain vehicle classes from a driving prohibition—excluding the specific class of vehicle involved in the offence—must be made with careful consideration. The court must exercise this discretion prudently and ensure that the rationale behind such an exception is fully articulated in the sentencing judgment. In *casu*, the magistrate failed to explain why the driving prohibition was restricted to Class 4 vehicles, raising the fundamental question of whether judicial discretion was exercised at all. Without any reasoning in the sentencing judgment, it remains uncertain whether the limitation was a considered decision or merely an oversight. Judicial discretion, when applied, must be properly justified, and the absence of an explanation suggests that no deliberate assessment was undertaken in restricting the prohibition to a single vehicle class.

18. The magistrate’s decision to limit the ban without justification was flawed and inconsistent with the intent of sections 53(4), 65(1), and 65(3). The sentencing judgment should have reflected a careful evaluation of the consequences of allowing the accused to continue driving other classes of vehicles. As highlighted in paragraphs 3 to 5 of this judgment, the accused could still obtain a Class 1 licence, operate heavy vehicles, commuter omnibuses, and buses that fall under Classes 1 and 2, thereby

posing an even greater risk to public safety. Clearly, the trial magistrate overlooked the provisions of Part 1X which are referred to in s 53(4), particularly section 65(1) and (3), resulting in a misapplication of the law. The prohibition decision was not well-considered and requires corrective action to ensure compliance with legal requirements and public safety principles.

19. S 65 (6) – (8) of the RTA provides for such correction within 6 months of conviction of the offender. It reads,

“(6) Subject to subsection (8), if a court convicts a person of an offence in respect of which—

(a) prohibition from driving is required to be imposed in terms of this Act, and the court for any reason does not prohibit the convicted person from driving or prohibits him from driving for a shorter period than that required in terms of this Act; or

(b) cancellation of a licence is required to be imposed in terms of this Act, and the court for any reason does not cancel the licence of the convicted person in respect of all or any of the classes of motor vehicles in respect of which it is required to be cancelled; the court shall cause notice to be served on the convicted person directing him to appear before the court at the time and place specified in the notice to show cause why the prohibition or cancellation should not be imposed or the order should not be corrected, as the case may be.

(7) If a person who has received notice in terms of subsection (6) fails to appear before the court or to show cause in terms of the notice, the court shall impose the appropriate prohibition or cancellation which shall have effect from the date of such imposition.

(8) No notice in terms of subsection (6) may be given more than six months after the date of the conviction, unless the prohibition from driving or cancellation of a licence was required to be imposed in terms of subsection (2) of section sixty-four A.” (my underlining)

20. In terms of subsection (6), if a court convicts an accused of an offence that requires a driving prohibition or licence cancellation but fails to impose it or imposes a shorter period than required, the court must issue a notice to the convicted person. The notice directs the accused to appear before the court to justify why the prohibition or cancellation should not be imposed or corrected. In terms of subsection (7), if the convicted person fails to appear or does not provide a valid reason, the court must impose the appropriate prohibition or cancellation. In terms of subsection (8), the court cannot issue a notice under subsection (6) more than six months after the conviction. However, if the prohibition or cancellation was required under section 64A (2), the six-month limit does not apply. It is clear that the purpose of these provisions is to ensure that courts correct errors in sentencing related to driving bans. The provisions prevent

loopholes where offenders escape mandatory prohibitions. They also provide a clear timeframe for enforcing corrections.

21. Since the accused was sentenced on 13 May 2025, his conviction remains within the six-month window. Consequently, the matter is remitted to the trial magistrate, and he is directed to follow the procedure outlined in section 65(6) of the Act. This entails issuing a notice requiring the accused to appear before the court and demonstrate why a driving prohibition should not be imposed across all classes of motor vehicles for six months. The magistrate must then resentence the accused in accordance with the guidelines set forth in this review. Should there be justification for exempting certain vehicle classes, the magistrate must first impose the driving prohibition in general, then explicitly define which vehicle classes are excluded. This approach ensures compliance with section 65(1) as read with section 65(3) of the Act. See *S v Sabau supra*.

MUREMBA J:

MAWADZE DJP AGREES