

**IN THE SUPREME COURT OF SEYCHELLES**

**CriminalSide: CN 43/2015**

**Appeal from Magistrates Court decision 788/2015**

**[2016] SCSC 470**

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**NIRANN GREG JAMES**

Appellant

versus

**THE REPUBLIC**

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Heard: 4 July 2016

Counsel: Mr Gabriel for appellant

Ms Faure, State Counsel for the Republic

Delivered: 4 July 2016

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**JUDGMENT**

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Akiiki-Kiiza J

**[1]** The Appellant had pleaded guilty to the offence of driving on the public road without a policy of insurance in respect of the Third Party Risk Act (Chapter 135) of Section 4 (1) and 4 (2) of the same Act.

**[2]** It is alleged that he, on the 28<sup>th</sup> of August 2014 at English River, Mahe, drove motor vehicle registration No S11550 on the public road without a valid policy of insurance or such a security in relation to the use of the said motor vehicle by the Appellant in respect to the Third Party Risks as per requirement of the said Act.

- [3] He also pleaded guilty to the second count of driving a motor vehicle with alcohol concentration above the prescribed limit of the regulation 3 (1) and 9 (1) of the Road Transport (Sober Driving) Regulations 1995 (S.I. 109/95) of the Road Transport Act Chapter 206, punishable under Section 24 (2) of the same Act. He is however appealing against the first count only.
- [4] While Sentencing him on the first count, the learned trial Magistrate suspended the Appellant's driving license for a period of one year from the date of conviction. He was ordered to surrender the same to the Registry of the Court on that day.
- [5] In his Memorandum of Appeal, the Appellant raised the following grounds;
- (a) That the Sentence of suspension of the driving license of the Appellant, imposed by the learned trial Magistrate is manifestly harsh, excessive and wrong in law.
  - (b) That the learned Magistrate erred in suspending the driving license of the Appellant without considering the special reasons as to why the driving license of the Appellant should not be suspended.
- [6] At the hearing of the Appeal, the Appellant was represented by Mr Nichol Gabriel and the Respondent was represented by Ms Amanda Faure. Both made extensive written and oral submissions. I would restrict myself however, to those relevant to the first count as Mr Gabriel concentrated on that one only during his oral submissions in Court.
- [7] Section 4 of the Motor Vehicles Insurance (Third Party Risks) Act, provides as follows;
- “(1) Subject to the provisions of this Act, it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the use of the vehicle by that person, as the case may be, such a policy of insurance or such a security in respect of a Third Party Risks as complies in the requirements of this Act.*
- (2) If a person acts in contravention of this section, he shall be liable to pay fine of two thousand rupees or to imprisonment for a term not more according six months, or both such fine and imprisonment and a person convicted of the offence under this section shall be disqualified from holding or obtaining a Certificate of Competency for a period of twelve months from the date of conviction.” (Emphasis Supplied)*

- [8] Section 48 of the Road Transport Act, Chapter 206 enacts as follows;  
*“If an Applicant shall satisfy the testing officer that he is competent to drive and fully control the vehicle which he proposes to drive, he shall receive from that officer a certificate to that effect and shall deliver the Certificate to the officer of the licensing authority before his application is approved”.* (Emphasis Supplied)
- [9] From my careful and analytical reading of both Section 4 of the Motor Vehicle Insurance (Third Party Risks) Act and Section 48 of the Road Transport Act, Chapter 206, it is clear that the Certificate of Competency is issued by the testing officer after someone undergoes a driving test and passing it. It is after getting the Certificate of Competency that an Applicant can receive a driving license from the licensing authority.
- [10] It is my considered view that it is this Certificate of Competency which is to be suspended under the provision of Section 4 (2) of the Motor Vehicle Insurance (Third Party Risks) Act and not the driving license as held by the learned trial Magistrate. It is my view that these are two distinct documents and cannot be used or applied in the interchangeably.
- [11] This appears to be the holding of Seaton CJ, in the case of **Gregoire Payet versus The Republic [1981] SLR 14** which was followed by Judge Robinson, in the case of **Nigel Cafrine versus The Republic CN 31/2013**.
- [12] In the premises therefore I will follow both authorities and allow this appeal and amend the order of the learned trial Magistrate to read, that it is the Certificate of Competency which is suspended instead of a driving license.
- [13] Order Accordingly.

Signed, dated and delivered at Ile du Port on 5 July 2016

D Akiiki-Kiiza  
**Judge of the Supreme Court**