

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 42/2015

Appeal from Magistrates Court decision 431/2015

[2016] SCSC

785

DOMINQUE ANTOINE HIGBY
Appellant

versus

THE REPUBLIC

Heard: 29th September 2016
Counsel: Mr. N. Gabriel for appellant
Mr. H. Kumar, Principal State Counsel for the Republic
Delivered: 5th October 2016

JUDGMENT

Akiiki-Kiiza J

- [1] The appellant was convicted of a traffic offence and his driving licence was suspended for a period of one year. He had pleaded guilty to the offence of driving on a public road without a Policy of Insurance in respect of *Third Party Risks Act Contra Section 4 (2) of Motor Vehicle Insurance Act Cap 135*.

- [2] He appealed against sentence on the following grounds:-
- a) That the sentencing of suspension of the driving license imposed by the learned Magistrate is manifestly harsh, excessive and wrong in law.
 - b) That the learned trial Magistrate erred in suspending the driving license of the appellant despite the plea in mitigation made by him and without considering the special measures as to why the driving licence of the appellant should not be suspended.
- [3] At the hearing of the appeal, Mr. Nichol Gabriel appeared for the appellant, and Mr. Kumar was for the Respondent.
- [4] A similar situation had arisen earlier before me in the recent case of **NIRAN GREG JAMES VS THE REPUBLIC [2016] SCSC 470**. As in the case here the learned trial Magistrate had ordered the suspension of the licence, whereas the law talked of being disqualified from holding or obtaining a **Certificate of Competency**. (see *Section 4 (1) and 4(2) of the Motor Vehicle Insurance (Third Party Risk Act)*).
- [5] This Certificate of Competency is issued by the testing officer to an applicant when he satisfies him that he is competent to drive and fully control a vehicle. Then the applicant will take this Certificate of Competency to the Licensing Authority, who will eventually may issue the driving licence or permit (See *Section 48 of Road Transport Act, Cap 200*)
- [6] It is clear for the provision of *Section 4 (2) of the Motor Vehicle Insurance (Third Party Risks) Act*, that, it is the Certificate of Competency and not the driving licence which is affected upon conviction. It is the one to be suspended but not the driving license as the learned trial Magistrate did in the instant appeal. (See also the cases of **GREGOIRE PAYET VS THE REPUBLIC [1981] SLR 14** and **NIGEL CAFRINE VS THE REPUBLIC CN 31/13**).

[7] In the premises therefore this appeal is allowed and the order of suspending the Driving Licence is quashed and set aside. If it was impounded, it should be returned to him.
Order Accordingly

Signed, dated and delivered at Ile du Port on 05/10/16

A handwritten signature in blue ink, consisting of a large, stylized initial 'D' followed by several vertical strokes, likely representing the name D. Akiiki-Kiiza.

D Akiiki-Kiiza

Judge of the Supreme Court