

STATE

Versus

FOSWAKE ONIAS SUMASUMO

IN THE HIGH COURT OF ZIMBABWE
TAKUVA J
BULAWAYO 9 SEPTEMBER 2021

Criminal Review

TAKUVA J: This record was placed before me by the learned Scrutinising Regional Magistrate at Gokwe in terms of section 58(3)(b) of the Magistrates Court Act (Chapter 7:10).

THE FACTS

The accused appeared before a Magistrate at Gokwe facing the following counts:

COUNT ONE

Contravening section 28(2)(a) as read with section 28(5) of the Firearms Act Chapter 10:09 “Failure to Safeguard a Firearm.”

In that on a date to the Prosecutor unknown and at Ardingly Farm, Karoi, Foswake Onias Sumasumo being a registered firearm holder of a 303 USSR Carbine Rifle serial numbers T5503 failed to take all precautions as may be reasonably necessary to prevent such firearm falling into the possession of Robert Makamure an unauthorised person in terms of the Act.

COUNT TWO

Contravening section 4(4)(c) of the Firearms Act (Chapter 10:09) “Failure to comply with conditions of a Firearm Certificate” In that on the 16th day of October 2020 and at Ardingly Farm, Karoi Foswake Onias Sumasumo failed to renew a Firearm Certificate for a 303 USSR Carbine Rifle serial numbers T 5503 which expired on 1 May 2019.

The conviction in respect of count one is in accordance with real and substantial justice. It is hereby confirmed.

However, the record of proceedings in respect of count two shows that on 16 October 2020, the accused was found in possession of a 303 rifle well after the Firearm Certificate had

expired on 1 May 2019. The accused possessed the rifle from 2 May 2019 to 16 October 2020 without a valid Firearm Certificate. As a result, he was charged, convicted and sentenced of contravening section 4(4)(c) of the Fire Arms Act Chapter 10:09 for failure to renew an expired licence. He was sentenced to pay a fine of RTGS \$2500-00 in default of payment 2 months imprisonment. In addition the Firearms Certificate was cancelled.

Upon scrutinising these proceedings the learned Regional Magistrate raised the following queries:

- i. ...
- ii. Does failure to renew a Firearm Certificate which has expired fall within the ambit of section 4(4)(c) of the Act taking into account the conditions stipulated or outlined by the expired Firearm Certificate and that the validity of the Firearm Certificate and the conditions thereof automatically terminated upon expiry.
- iii. Does the accused's criminal conduct not fall within the ambit of section 4(1) as read with subsection (2) of the Act?
- iv. Was it necessary to cancel an expired Firearm Certificate taking into account that its validity automatically terminated upon expiry."

The trial Magistrate disagreed with the Regional Magistrate arguing that on the facts of this case especially taking into account the provisions of section 5(5) of the Act it is proper to charge the accused with contravening section 4(4)(c).

Section 5(5) provides;

"5(5) Unless previously revoked in terms of subsection (8) or cancelled by order of court, a Firearm Certificate shall be valid for three years, calculated from the first day of the month in which it was issued and may, on application to the Controller, be renewed from time to time for a further three year periods."

Section 4(4)(c) provides that;

"If a person – fails to comply with conditions subject to which a Firearm Certificate is held by him; he shall, subject to this Act, be guilty of an offence ..." the underlining is for emphasis).

The other relevant sections are section 4(1) and section 5(3) of the Act. Section 4(1) provides:-

4. PENALTY FOR PURCHASING FIREARMS OR AMMUNITION WITHOUT FIREARM CERTIFICATE

- (1) Subject to this Act, no person shall purchase, acquire or have in his possession any firearm or ammunition unless he holds a Firearm Certificate in respect thereof in force at the time.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine or such imprisonment.” (my emphasis).

Section 5(3) states:-

“5. **GRANT OF FIREARM CERTIFICATE**

- (1)
- (2)
- (3) A firearm Certificate granted under this section shall be in the prescribed form and shall specify the conditions, if any, subject to which it is held, the nature and the number of the firearm to which it relates, and, as respects ammunition, the quantities authorised to be purchased and to be held at any, one time thereunder.” (emphasis added)

The issue *in casu* is one of interpretation of a statute. That it is the duty of a court to interpret statutes is trite. In *Natal Joint Municipality Pension Fund v Endument Municipality* 2012(4) SA 593 (SCA) the court said;

“Interpretation is the process of attributing meaning to the words in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed; and the material known to those responsible for its production.”

In *Chihava & Ors v The Provincial Magistrate Francis Mapfumo N.O and Another* 2015(2) ZLR 31 (CC) at pp 35H-37B the Constitutional Court said;

“The starting point in relation to the interpretation of statutes generally would be what is termed “the golden rule” of statutory interpretation. This rule is authoritatively stated thus in the case of *Coopers & Lybrand & Ors v Bryand* 1995(3) 8A 761 (A0 at 767:

“According to the “golden rule” of interpretation, the language in the document is to be given its grammatical and ordinary meaning unless this would result in some absurdity, or some repugnancy or inconsistency with the rest of the instrument.” (my underlining).

In casu a reading of section 5(3) of the Act does not reveal any ambiguity in the language used by the legislature. This section provides that a Firearm Certificate shall specify the conditions if any, subject to which it is held not which it was held.

As regards section 4(4)(c) an ordinary grammatical reading of it shows quite clearly that it criminalises a holder of a valid Firearm Certificate who fails to comply with conditions specified thereon. The Firearm Certificate *in casu* had expired and its validity and conditions specified therein automatically terminated upon expiry. The accused cannot be charged with failure to comply with conditions which had automatically terminated upon expiry. Further, the expired firearm Certificate does not specifically mandates the accused to renew the Firearm Certificate upon expiry as a condition.

Therefore I conclude that section 4(4)(c) of the Act does not create an offence of failure to renew an expired Firearm Certificate. In fact there is no section in the Act that creates such an offence. I totally agree with the learned Regional Magistrate that what the accused did falls within the ambit of section 4(1) as read with subsection (2) of the Act in that he possessed a firearm without a Firearm Certificate after the expiry of his Certificate. For the accused to lawfully possess a firearm in terms of that section he must be a holder of a Firearm Certificate “in force at the time.” It is common cause that at the time of his arrest the accused’s Firearm Certificate was no longer in force. It had expired and terminated by operation of the law.

Moreover, the trial court committed a further error when it cancelled a non-existent Firearm Certificate. This the court did by way of an “additional sentence” to that of a fine it had imposed. In my view this additional sentence is incompetent at law for the simple reason that the validity of the Firearm Certificate automatically terminated upon expiry. Put differently at the time of sentence there was no Firearm Certificate. It had expired. A court can only cancel a valid Firearm Certificate in terms of section 31(1) of the Act. See also section 5(5) *supra*.

CONCLUSION

The proceedings in respect of count one are in accordance with real and substantial justice. However the proceedings in respect of count two are not in accordance with real and substantial justice.

DISPOSITION

In the result it is ordered as follows –

1. The proceedings in respect of Count 1 are hereby confirmed.
2. The proceedings in Count two be and are hereby quashed. The conviction and sentence be and are hereby set aside.
3. The matter be and is hereby remitted to the court *a quo* for a trial *de-novo* in respect of count 2 on a charge of contravening section 4(1) of the Firearms Act (Chapter 10:09)
4. The accused must be refunded the amount of RTGS \$2500 that he paid as a fine in respect of Count 2.

Makonese J I agree