

1. STATE  
versus  
TICHAONA DZOTIZEI  
MRWP 244/21
2. STATE  
versus  
PETER MARIZANI  
MRWP 18/21
3. STATE  
versus  
ROBERT CHIMUKOKO  
and  
LIBERTY JUMBI  
MRWP 319-20/21
4. STATE  
versus  
LAZARUS MANDANDA  
MRWP 312/21
5. STATE  
versus  
SHARON MAPEPA  
MRWP 26/21
6. STATE  
versus  
FINISH KANYONGO  
MRWP 283/21

HIGH COURT OF ZIMBABWE  
CHITAPI J  
HARARE, 24 January, 2022

### **Criminal Review**

CHITAPI J: The above record of proceedings pertain to trials presided over by the same magistrate at Murehwa Magistrate Court. They suffer from the same irregularity of a procedural error which vitiates the proceedings. In all the cases, the accused persons were convicted on their own pleas of guilty purportedly done in terms of s 271 (2) (b) of the Criminal Procedure and Evidence Act, [*Chapter 9:07*]. When the records were initially placed before me to review in July, 2021, I raised in respect of each record of proceedings, a similar query

on whether or not the trial magistrate had complied with the provisions of s 271(3) of the same enactment aforesaid in disposing of the trials by way of guilty plea.

The trial magistrate has responded in a similarly worded letter in respect of each of the cases as follows:

“... as the record will show, the charge was indeed put to the accused person, explained and was understood. However, it is conceded that the provisions of s 271(3) were not fully complied with for the explanation and accused’s response should have been recorded. I also appreciate that this court is a court of record and the record should have spoken for itself. This is an utmost concession which is to be coupled with an undertaking to guard against such shortfalls in future...”

The response by the trial magistrate M Musiiwa Esquire is refreshing and shows the effectiveness of the review process. The trial magistrate has stated that he is now properly guided and additionally he embraced the rationale for the need to keep a correct record of the proceedings given that the magistrates’ court is a court of record. In the light of the concession by the trial magistrate, the only issue that arises is to determine the fate of the impugned proceedings. Before making

**State v Tichaona Dzotizei MRWP 244/21**

The accused was charged with the offences of assault as defined in s 89(1)(b) of the Criminal Law (Codification & Reform) Act, [Chapter 9:23] (“the code”) and of Malicious Damage to Property as defined in s 140(1)(a) of (“the Code”). The brief admitted facts of the case were that the accused arrived at the complainant’s shop at Muhume Business Centre, Murewa. The complainant had closed her shop. When the complainant refused to open the shop, the accused produced a knife with which he threatened the complainant with death. The accused went on to break six window panes of the shop’s windows. The accused after conviction was sentenced in relation to assault, to a wholly suspended four month imprisonment term on conditions of future good behaviour and in respect of malicious damage to property, to 12 months imprisonment with part suspended on condition of future good behaviour, part on condition of restitution and the balance was suspended on conditions that the accused performs community service.

**State v Peter Marizani MRWP 18/21**

The accused was convicted of two counts of stock theft as defined in s 114(2)(a)(i) and (ii) of the Code. He pleaded guilty to having stolen two bovines in separate incidences on the 1<sup>st</sup> of January, 2021 and between December, 2020 and January, 2021. The accused was sentenced to 12 years imprisonment on each count. The sentences were ordered to run concurrently. Two (2) years were suspended on conditions of good behaviour and one (1) year was further suspended on condition of restitution. Nine (9) years was ordered to be effectively served.

**State v Robert Chimukoko and Liberty Jumbi MRWP 319-20/21**

The two accused on 8 April, 2021 pleaded guilty to theft of a 15kg of potatoes at Bally Vaughan Farm, Chief Chikwaka, Juru. The accused were arrested on 4 April, 2021 whilst in the process of unlawfully harvesting the potatoes from the complainant's farm. Each accused was sentenced to 16 months imprisonment with part thereof suspended on conditions of future good behaviour and part on conditions of performance of community service.

**State v Lazarus Mandanda MRWP 312/21**

The accused on 7 April 2021 pleaded guilty to one count of Domestic Violence and another count of Malicious Damage to Property as respectively defined in s 4(1) as read with s 3(1) (h) of the Domestic Violence Act [*Chapter 5.16*] and s 140 (a) of the Criminal Code. The accused admitted to having unlawfully damaged his wife's kitchen utensils and torn her clothes and further damaged two doors and a door lock belonging to the complainant. The accused was sentenced to 16 months imprisonment for both counts with portions thereof suspended on conditions of future good behaviour, restitution and community service.

**State v Sharon Mapepa MRWP 26/21**

The accused on 8 January 2021, pleaded guilty to the offence of theft as defined in s 113 (1) (a) and (b) of the Criminal Code. The accused admitted to having stolen various goods at the complainant's home in Tapera Village, Murewa. The accused was employed as a

domestic worker by the complainant. The accused was sentenced to 18 months' imprisonment with 3 months suspended on conditions of future good behaviour. A further 5 months was suspended on condition of restitution of \$217 653.00. The remaining 10 months was suspended on condition of community service. I comment in passing that the order of restitution was perfunctorily imposed without an investigation into the accused's ability to pay restitution. However, in view of the manner in which the review is to be disposed of, the issue become inconsequential.

**State v Finish Kanyongo MRWP 283/21**

The accused on 1 April 2021 pleaded guilty to and was convicted of the offence of assault as defined in s 89 (1) (a) of the Criminal Code. The accused admitted to having unlawfully assaulted the complainant on 8 November 2020 at Bhundu Business Centre, Murewa by hitting the complainant with a wooden log, fists and open hands. The accused was sentenced to 14 months imprisonment with 4 months therefore suspended on conditions of future good behaviour. The accused had a suspended sentence of 4 months imprisonment for a similar conviction of assault. The same was brought into effect.

In each of the cited cases, the trial magistrate as properly admitted by the magistrate concerned was not guided to comply with the mandatory provisions of s 271 (3) of the Criminal Procedure and Evidence Act. The trial magistrate's attention was drawn to the review decision of this court in *State v Mangwende* HH 695-20 where in the procedure for disposing of a trial by way of a guilty plea is explained. The trial magistrate admitted that the peremptory procedure was not followed. The failure to do so is fatal to the convictions and sentences which should be set aside.

Resultantly, the following order is made:

- (i) The proceedings in case Nos. CRB MRWP 244/21; CRB MRWP 18/21; CRB MRWP 319-320/21; CRB 312/21; CRB MRWP 26/21 and CRB MRWP 283/21 are hereby quashed and the convictions and sentences are set aside.
- (ii) The accused are liable to be tried afresh in the discretion of the Prosecutor General to institute fresh prosecutions on the same charges.

- (iii) If the Prosecutor General institutes fresh prosecutions and the accused persons are convicted, the convicting magistrate shall consider portions of sentences already served by the accused in the proceedings now set aside, as already served portion of any new sentence which may be imposed.

MUSITHU J, agrees: .....