

1.THE STATE
versus
KIMSON MARIMO

CRB NZV 154/20

2.THE STATE
versus
AUSTINE MANDAZA

CRB NZV 159/20

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

Review Judgment

CHITAPI J: The two cases cited above were dealt with by the same Provincial Magistrate N. Mangoti *Esquire* at Concession Magistrate Court. The trials were disposed of by way of guilty pleas in terms of the provisions of s 271 (2) (b) of the Criminal Procedure and Evidence Act, [*Chapter* 9:07]. When the records were placed before me on review, I raised a query for comment by the trial magistrate on whether the Magistrate had complied with s 271 (3) of the same enactment which requires that the charge should be explained to the accused and that the explanation given to the accused shall be recorded. The Magistrate's attention was drawn to the case of *S v Mangwende* HH 695/20 for guidance when commenting on the query. The Resident Magistrate for the court concerned has written a letter advising that the trial Magistrate was not available to respond to the query as he left service. I will therefore deal with the reviews without the benefit of the trial Magistrates comment. Fortunately because the issue that concern this review is one that appears *ex facie* the record, I am not handicapped to dispose of the review.

In case no CRB 154/20, the accused on 29 October 2020 pleaded guilty to the offence of robbery as defined in s 126 of the Criminal Law (Codification and Reforce) Act [*Chapter*] 9:23 (the code). The admitted facts were that on 20 October, 2020 Chokweva Village, Chiweshe, the accused robbed the complainant who was walking along the road of a wallet containing USD\$200.00 and a cellphone handset valued at USD\$62.00. The accused was sentenced to 30 months imprisonment of which 10 months was suspended on condition of future good behavior and a further 6 months on condition of restitution of USD\$200.00 and cellphone handset.

In case Number CRB 159/20, the accused on 2 November 2020 pleaded guilty to and was convicted of the offence of stock theft as defined in s 114 (2) (a) of the Code. The facts were that on 27 October, 2020 the accused stole one bovine at Mukodzongi village; Negomo Chiweshe. The accused opened the complainant's cattle pen and drove out one bovine thereon. The bovine was recovered. The accused was sentenced to the 9 years mandatory minimum sentence which the court is bound to impose in the absence of a finding of special circumstances to justify the imposition of a lesser penalty.

The records show that the trial magistrate did not comply with the mandatory provisions of s 271 (3) of the Criminal Procedure and Evidence Act. There is nowhere on record to indicate that the trial magistrate recorded the explanation of the charge to the accused in content. Section 271 (3) (i) requires that the explanation given to the accused should be recorded. The case of *S v Mangwende (supra)* gives details of the correct way to dispose of a trial by way of a guilty plea. It also provides that a failure to follow the mandatory procedure vitiates the proceedings. The same must apply to the proceedings under review herein. They must be quashed.

It is therefore ordered as follows

- (i) The proceedings in case Nos NZV 154/20 and NZV 159/20 are quashed and the convictions and sentences imposed set aside.
- (ii) The accused persons are liable to a fresh prosecution in the discretion of the Prosecutor General.
- (iii) In the event that a fresh trial is instituted and the accused are convicted, the portions of their quashed sentences already served shall count as part of an already served portion of any new sentence which may be imposed on re-trial.

MUSITHU J Agrees