

THE STATE  
versus  
CRANRID PETROLEUM

HIGH COURT OF ZIMBABWE  
ZISENGWE J  
MASVINGO 16 February 2020

### **Criminal Review**

**ZISENGWE J:** The accused is a company duly registered in terms of the laws of Zimbabwe. It was represented during criminal proceedings in the magistrates Court by one Patrick Kwatengera. In those proceedings which now constitute the subject matter of the present review, it was charged with and subsequently convicted of, the offence of contravening section 29 (i) Petroleum Act [*Chapter 13:22*]. The said provision criminalises the selling, procuring or production of any petroleum product without a licence issued in terms of that Act. In this case the proscribed conduct consisted of selling of diesel and petrol without such a licence, in other words operating a fuel station without a licence.

The company's representative pleaded guilty to the charge following which the accused company was convicted as aforesaid before being sentenced as follows:

*“To pay a fine of \$40 000 or in default of payment the accused person to be attached by the messenger of court.”*

The record of proceedings was subsequently submitted to this court ostensibly for review in the ordinary course. I pause here to observe that in terms of *proviso* (ii) (b) of section 57 (i) of the Magistrates Court Act [*Chapter 7:10*], where the accused is a corporate body the matter is generally exempt from automatic review as contemplated in section 57 of the Magistrates Court act. Had the proceedings been accordance with justice I would have returned the record for filing without much ado.

However, in terms of section 29 (4) of the High Court Act, [Chapter 7:06] the High Court is at large to exercise its review powers where it observes a misdirection in criminal proceedings notwithstanding that the record was not submitted for review. I believe that this provision is sufficiently wide in its ambit to cover a situation such as the present where the record was erroneously submitted for review. The said section reads:

" (4) *Subject to rules of court, the powers conferred by subsections (1) and (2) may be exercised whenever it comes to the notice of High Court or a Judge of the High Court that any criminal proceedings of any inferior court or tribunal are not in accordance with real and substantial justice, notwithstanding that such proceedings are not the subject of an application to the High Court and have not been submitted to the High Court or judge for review. "*

In the present case I observed upon a perusal of the record that the proceedings are afflicted by two material misdirections. Firstly, and perhaps more importantly, there is the want of authority on the part of the person who purported to represent the accused company during the proceedings. The second misdirection relates to formulation of the sentences thereby imposed.

The board resolution ostensibly granting Mr Patrick Kwatengera authority to represent the accused company reads as follows;

*"At the meeting of the board of directors of Cranrid Investments (Private) Limited of 2 October 2021 it was resolved that:*

(i) *Mr Patrice Kwatengera ID number [supplied] be authorised to represent Cranrid Investments (Private) Limited in all **civil litigation** pertaining to the commercial operations of the company*

*And*

(ii) *Mr Patrice Kwatengera, be authorized to render oral and/or written testimony on behalf of Cranrid Investments (Pvt) Ltd, sign and execute all affidavits and documentation which Cranrid Investments (Pvt) Ltd may be required to file in these proceedings, and to bind Cranrid Investments (Pvt) Ltd thereto and to do all things necessary to pursue this **civil litigation** and to represent Cranrid Investments (Pvt) Ltd in these **civil proceedings** and appoint counsel if necessary. "*

In view of the contents of that resolution I directed a query to the learned Magistrate on whether Mr Kwatengera was duly authorised to represent the accused company in **criminal proceedings** given that board resolution which specifically refers to **civil litigation**. Secondly, I enquired if Mr Matongera had authority to plead guilty to the charge as required by Section 385 (3) (i) of the Criminal Procedure and Evidence Act, [Chapter 9:07] (“the CPEA”).

The learned Magistrate has since written back conceding to the error on both accounts. Section 385 CPEA deals with the procedure to be followed in the prosecution of corporations and members of associations. Pertinently subsection (3) of the said section provides as follows;

- (3) *In any criminal proceedings against a corporate body, a director of that corporate body shall be cited, as representative of that corporate body, as the offender, and thereupon the person so cited may, as such representative, be dealt with as if he were the person accused of having committed the offence in question:*

*Provided that: -*

- (i) *If the said person pleads guilty, the plea shall not be valid unless the corporate body **authorised him to plead guilty** (emphasis mine)*

It was therefore necessary to enquire not only where the representative derived his authority to represent accused company in criminal proceedings but also whether he had authority to plead guilty to the charge as contemplated in section 385 (3) (i).

As regards the formulation of the sentence, the trial Magistrate has equally conceded that the sentence was erroneously formulated as it purports authorize the attachment of the accused company instead of its assets Section 385 (3) (iv) of the CPEA provides as follows;

*"if the said person, as representing the corporate body, is convicted, the court convicting him shall not impose upon him in his representative capacity any punishment, whether direct or as an alternative, other than a fine even if the relevant enactment makes no provision for the imposition of a fine in respect of the offence in question, and no such fine shall be payable by the corporate body and may be recovered by attachment and sale of any property of the corporate body in terms of section there hundred and forty eight. "*

The conviction being vitiated by a material irregularity namely want of authority on the part of the person purporting to represent the company, the proceedings cannot be allowed to stand.

Accordingly, the following order is hereby made:

- (a) The conviction is hereby quashed and the sentence set aside.
- (b) The matter is hereby remitted to the court *a quo* for a trial *de novo* before the same magistrate or in her absence before any other magistrate with due regard the observations above.
- (c) In the event of the trial resulting in a conviction, the sentence to be imposed must not be more severe than the one originally imposed.

ZISENGWE J

MAWADZE J agrees.....