

**ZEBEDIYA MAVUNA****Versus****THE STATE**IN THE HIGH COURT OF ZIMBABWE  
MAKONESE & TAKUVA JJ  
BULAWAYO 11 JULY 2016**Criminal Appeal**Appellant in person  
Miss S Ndlovu for the respondent

**MAKONESE J:** The appellant appeared before a magistrate at Western Commonage Magistrates' Court facing a charge of contravening section 4 (1) of the Shop Licences Act (Chapter 14:17). The allegation being that on the 23<sup>rd</sup> January 2015 and at Njube Butchery, Njube, Bulawayo, the appellant Zebedia Mavuna being the manager of Njube Butchery, operated the butchery without a valid shop licence. The appellant was further charged with contravening section 4 of the Registration and Inspection of Premises of the Bulawayo City – By Laws in that he operated the butchery without a registration certificate. The appellant was convicted on his own plea of guilty and was sentenced to pay a fine of US\$50,00 in respect of each count. The appellant now appeals against both conviction and sentence. In his grounds of appeal the appellant states that the court erred in convicting the appellant in his personal capacity and yet he was employed as a manager at the butchery.

**Brief facts**

The brief facts as contained in the outline of the state case are that on 23 January 2015, Constable Chivasa and Constable Zhou, both stationed at Njube Police station, and attached to the anti-stock theft unit were on routine patrols checking shop and butchery licences when they arrived at Njube Butchery. The appellant who was manning the butchery failed to produce a shop licence and they arrested him. He was charged and taken to court for operating without a shop licence and failing to produce a registration certificate. When appellant appeared in court

he was unrepresented. The record of proceedings in the court *a quo* reflected that the learned magistrate recorded the following:

“Charge put, explained and understood.

Plea - Count 1 Guilty S 271 (2) (a)  
Count 2 Guilty S 271 (2) (a)

I find accused guilty as charged. 1<sup>st</sup> offender”

The learned magistrate then proceeded to record the reasons for sentence after hearing submissions in mitigation. In his response to the grounds of appeal the learned magistrate responds as follows:

“The trial court finds no merit in the appellant’s aberration this matter

- 1.1 Appellant pleaded guilty and was convicted on the basis of the pleas.
- 1.2 State is *dominus litus* and charged appellant. It is not the court that prefers charges against a suspect.
- 1.3 Appellant had an obligation to see to it that the business books were in order.

The trial court finds nothing amiss about the conviction and sentence hence submits that it be upheld unless the appeal court finds otherwise.”

The state has conceded that the learned magistrate erred in convicting and sentencing the appellant in his personal capacity. It is common cause that appellant was a mere worker and was not the owner of the business. The court *a quo* should not have merely accepted the appellant’s plea, despite the court not being the one preferring the charges. It is a serious misdirection for the court to enter a plea of guilty without ascertaining the correctness of the charge. It is indeed an irregularity for the court to take the approach that since the state is *dominus litis* then any charges preferred against an accused person should be taken on the state’s mere say so. The court has an obligation to ensure that the charges preferred against an accused person are correctly supported by the factual allegations. The court must always be satisfied that what an accused person admits to is supported by the facts and the precise nature of allegations preferred

against an accused must be verified by the court. In this case I have little doubt that the learned magistrate even bothered to peruse the Shop Licences Act and the City of Bulawayo Inspection of Premises Regulations. The attitude of the court and its lackadaisical approach to the propriety of the charges is evident in the response to the grounds of appeal. In the case of *S v Majarira* HH-88-03 CHINHENGO J held that:

“... the duty of the magistrate to explain the charge and the essential elements of the offence in a way calculated to inform the unrepresented accused of the nature of the charge in sufficient clarity and detail will suggest to him whether he has any defence to offer has often been emphasised see *S v Machokoto* 1996 (2) ZLR 190 (H) per GILLESPIE J at 200G – 201F.”

In my view the failure by the magistrate to verify the facts, and ascertain whether the appellant was the owner of the shop in question or its legal representative, resulted in a miscarriage of justice.

I am satisfied that the conviction and sentence cannot be allowed to stand. One wonders why the appellant was charged in his personal capacity in this matter. He was not the shop owner. He was not a legal representative of the company. He obviously pleaded out of ignorance.

In the result, the conviction and sentence is hereby set aside.

Takuva J ..... I agree

*National Prosecuting Authority*, respondent’s legal practitioners