

THE STATE**Versus****ZWANGENDABA PHIRI**IN THE HIGH COURT OF ZIMBABWE
BERE J
BULAWAYO 27 APRIL 2017**Review Judgment**

BERE J: The accused appeared before a Victoria Falls magistrate charged with the offence of contravening section 113 (1) of the Criminal Law Codification and Reform, Act [Chapter 9:23]. Upon conviction the accused was sentenced to 8 months imprisonment 2 months of which were suspended on condition of future good behaviour and the remaining 6 months were further suspended on condition the accused completed specified hours on community service.

When the record of proceedings was placed before the Regional Magistrate for scrutiny, the learned magistrate took issue with the manner in which the trial magistrate had conducted the proceedings leading to the conviction of the accused.

In order to put the issues into their correct perspective it is necessary for me to reproduce the portion of the record of proceedings which seems to have rattled the Regional Magistrate. The extract of the trial magistrate's record was presented as follows:

“Charge put to accused, explained and understood.

Plea - G S 271 2b C P and E Act.

Facts read to accused, explained and understood.

Facts marked annexure A

Agrees with facts

Nothing to add or subtract

E/E

Q Correct on 18 February 2016 you proceeded to Aerodrom Victoria Falls

A Yes

Q Correct you stole a black Samsung GTE 1250

A I picked it up because when I tried to return it e refused to get it.

Plea altered to not guilty.

Provisions of section 188 and s189 explained and understood”

The Regional Magistrate felt that the procedure adopted by the trial magistrate was not correct and she wrote to the magistrate as follows;

“... The writer notes that the trial magistrate altered the accused’s plea from guilty to not guilty and then explained the provisions of Section 188 and Section 189 of the CP&E Act, implying that the matter was proceeding to trial. The trial magistrate again altered accused’s plea after accused indicated that he never denied the charge.

The trial magistrate then proceeded to the essential elements of the offence which had hitherto been abandoned, proceeded to convict and sentence the accused.

May the trial magistrate explain the propriety of her actions.”

Unwilling to pick up an argument with the Regional Magistrate the trial magistrate responded as follows:

“Trial magistrate apologizes for the act of omission on her part. It was serious error and I promise to guard against such in future.”

The response given by the trial magistrate prompted the Regional Magistrate to refer the record of proceedings to me for review.

The exchanges between the trial magistrate and the Regional Magistrate calls into question and examination of section 271 and section 272 of the Criminal Procedure and Evidence Act [Chapter 9:07] because these are the two sections that regulate the procedure which confronted the trial magistrate and the Regional Magistrate. It is regrettable that when the Regional Magistrate referred the matter for review she did not explain or expouse her

appreciation of the law or what it is exactly that she found amiss with the procedure adopted by the trial magistrate. My view is that these matters must not be blindly referred for review but the court so referring must endeavour to explain the issues involved and possibly the court's appreciation of the law and together with the solution recommended.

Be that as it may I will try to deal with the issues as perceived.

As highlighted the procedure of handling a plea of guilty is clearly laid out in section 271 of the Criminal Procedure and Evidence Act (*supra*) and it is not intended to reproduce the self explanatory provisions in this judgment.

Suffice it to say that in the case under review the trial magistrate decided, and in my view correctly so to proceed with the plea in terms of section 271 2 (b) of the Act.

During the process of trying to canvass the elements of the offence charged, the accused then gave an explanation which on the face of it tended to show that the accused was not unequivocally accepting the allegations.

Being commendably alert to the procedure involved, the magistrate then altered the plea to one of not guilty and invited the accused to give out his defence outline after explaining to him the provisions of sections 188 and 189 of the Criminal Procedure and Evidence Act as dictated by law.

Instead of giving out a defence to the charge against him the accused maintained that he was guilty and went on to give an explanation which was consistent with his guilt, which statement did not even require the Prosecution to call for any evidence because the accused's explanation merely reaffirmed his unequivocal plea of guilty. Faced with that situation the trial magistrate had no option but to revisit the canvassing of the essential elements of the charge in terms of section 271 2 (b), which she did with distinction.

The Regional Magistrate appears to have been unsettled by the trial magistrate's decision to revisit the pursuing of the elements of the offence which she had temporarily shelved owing to the cosmetic denial given by the accused person. She seems to infer that since the trial magistrate had altered the plea to one of not guilty, the trial magistrate should have proceeded in terms of section 272 of the Act. Reliance on or proceeding in terms of this section pre-supposes that there are triable issues calling for a fully fledged trial. But, if there are no such issues at stake there is no need to conduct a trial. There was nothing warranting a trial in this matter as the accused person was admitting to the charge.

I find no misdirection in this matter, and if anything the trial magistrate must be commended for her alertness and knowledge of the correct procedure. I am only concerned with the ease with which the trial magistrate gave in to the letter written to her by the Regional Magistrate. The response shows the trial magistrate did not herself have the conviction of the correctness of the approach she had taken. She could have easily referred to the relevant sections of the Act and stood her ground. Our jurisprudence is not shaped by those magistrates who shy away from engaging in honest and serious professional intercourse with their seniors. The responses given to queries raised must be aided by proper research on such issues.

I accordingly confirm the proceedings as being in accordance with real and substantial justice.