

THE STATE
vs
MUNYARADZI DINGWIZA

CRB K1541/01

THE STATE
vs
SIMON CHINGWARU

CRB MAG 660/01

THE STATE
versus
STANLEY MPOFU

CRB K279/02

THE STATE
versus
JULIUS PHINEAS MASHUKU

CRB K1511/01

THE STATE
versus
CLAPOS MAKAMURE

CRB K1070/01

THE STATE
versus
CHIBHAMU PHIRI

CRB K1513/01

HIGH COURT OF ZIMBABWE
GUVAVA J
HARARE 8 May 2002

Review Judgment

GUVAVA J:I have decided to deal with these records together as they all essentially raise the same issue. It is also an issue which has appeared in numerous other records which have been dealt with on review by the High Court in the last few months.

In each of the records the accused person where charged with contravening section 73(2) as read with subsection (7) of the Road Traffic Act, [*Chapter 13:11*]. The allegations against the accuseds were that they had been previously issued with tickets prohibiting them from operating their motor vehicles as they had some mechanical defects. They had however continued to use the motor vehicles in question. They were all convicted on their pleas of guilty and sentenced to pay fines of \$5 000. The convictions in relation to each matter is proper and is hereby confirmed. It is the sentences imposed which have caused some difficulty.

Recent legislation i.e. the Road Traffic Amendment Act No. 3 of 2000, has increased the maximum penalties for this offence to a maximum of \$5 000 or imprisonment not exceeding two years or both fine and imprisonment (see s 24 of the Road Traffic Amendment Act, 2000). The amendment however did not increase the jurisdiction of magistrates. Unfortunately the magistrates dealing with these matters fell into the error of imposing the maximum penalty provided for by section 24 of the Amendment Act without taking into account that they had no jurisdiction to impose such sentences.

The result is that although the penalty imposed may be appropriate in the circumstances of the cases, it is not competent. The maximum sentence that the trial magistrates could impose were the maximum sentences within their jurisdiction as set out in section 50 of the Magistrates Court Act [*Chapter 7:10*].

In response to a query which I raised with one of the trial magistrates concerning the question of jurisdiction in these matters he responded as follows:

“Now in answer to the raised issue I am of the opinion that I have jurisdiction to impose such sentences and this is in terms of section 89(1) of the R.T.A. Chapter 13:11 as amended by section 34 of the Road Traffic Amendment Act No. 3/2000.”

This is clearly not correct. Section 89(1) of the Road traffic Act provides:

“A magistrates court constituted by a magistrate other than a regional magistrate, provincial magistrate or senior magistrate shall have special

jurisdiction to impose on summary trial, in respect of an offence referred to in subsection (6) of section *eighty one*, the full penalties specified in that section.”

The amendment to section 89 reads:

“(1) A magistrate shall have jurisdiction to impose any minimum penalty prescribed by this Act for any offence.”
(the underlining is my own)

The offences for which the accuseds have been charged and convicted in these cases did not relate to the offences referred to in section 81(6) of the Road Traffic Act and neither did they have a minimum penalty prescribed as stated in the Amendment Act. Accordingly the magistrates in these cases did not have any increased jurisdiction to impose the penalties they did. Section 81(6) of the Road Traffic Act deals with contraventions of regulations fixing the axle load of vehicles and this is completely different from the offences of which the accused were charged.

As the magistrates who dealt with these matters have different jurisdiction I shall amend the sentence for each case individually according to the jurisdiction of the magistrate who dealt with the matter as follows:

- “1. *S v Munyaradzi Dingwiza* : \$2 000 or 1 month imprisonment.
2. *S v Simon Chingwaru* : \$2 000 or 1 month imprisonment
3. *S v Stanley Mpofu* : \$2 000 or 1 month imprisonment
4. *S v Julius Phineas Mashuku* : \$3 000 or 2 months imprisonment
5. *S v Clapos Makamure* : \$3 000 or 2 months imprisonment
6. *S v Chibhamu Phiri* : \$3 000 or 2 month imprisonment”

The alteration is in relation to the fine imposed only and the rest of the sentence remains unaffected. The fines paid over and above the jurisdiction of the trial magistrates must be refunded to the accuseds persons.

The amendment to the Magistrates Courts Act which sought to increase the jurisdiction of magistrates in the General Laws Amendment Act No. 2 of 2002 was struck down as a nullity by the Supreme Court. It is hoped that Parliament will immediately take steps to re-enact the provisions relating to the jurisdiction of magistrates in order to give effect to the increase in penalties in the Road traffic Amendment Act as a great injustice is being occasioned by the failure by magistrates to impose appropriate sentences due to lack of jurisdiction.

Ndou J, I agree.