

THE STATE
versus
RONIAS CHARAMBIRA

HIGH COURT OF ZIMBABWE
KUDYA J
HARARE, 13 JUNE 2007

Criminal Review

KUDYA J: This record of proceedings was submitted for review by the Chief Magistrate on 29 May 2007. On 31 May 2007, Messrs Hungwe and Partners, acting for the accused person, also wrote to the Registrar seeking the urgent review of this matter.

There is agreement that the forfeiture order that was imposed by the trial magistrate was incompetent and that it must be set aside.

The accused person was charged with the offence of acting contrary to the conditions of the animal movement permit in violation of section 28(4)(d) of the Animal Health Act [*Chapter 19:01*]. He denied the charge but was convicted and sentenced on 23 May 2007 to pay a fine of \$4 000-00 or in default of payment to 4 days imprisonment. In addition the 49 goats and 2 sheep were forfeited to the State.

On 6 and 7 May 2007, the accused obtained two Zimbabwe Republic Police stock clearance certificates from Assistant Inspector Wedzerayi of Makande Police Post for 37 goats and 1 sheep. These animals were destined for Kaola Park abattoir in Chitungwiza. On 10 May 2007, he received the movement of animal permit to take 57 goats and 3 sheep from Makande in Kariba to the abattoir. The period allowed for the movement was 4 days while the means of conveyance was a motor vehicle. The special instructions in the permit were indicated as “strictly for direct slaughter”.

He left Makande and reached Harare on Saturday, 12 May 2007. He was aware, from previous dealings with the abattoir that it did not have the pens to keep the animals and that it did not slaughter them over the week-end. He decided to keep them at his relative’s plot in Waterfalls. He went and spent the week-end in Chitungwiza. On Monday 14 May 2007, the police impounded 51 animals and found a wet hide and a knife near the pens. His version that he never sold nor slaughtered any of the animals was not controverted by any evidence that was led by the State, on whom the burden of proof beyond a reasonable doubt lay. He could only

suggest that the 9 missing animals could have been lost during the time the police were rounding them up.

The animals were uplifted by SPCA for treatment and care because on an antecedent date some 5 goats at these pens had died of tetanus. By 23 May 2007, SPCA had incurred expenses estimated at \$9 535 000-00.

He was convicted of the offence that he was charged with, after the trial magistrate held that he diverted from the route to his destination and that all the 60 animals would not have reached that destination. She went for an inspection-in-loco and confirmed the presence of pens at the abattoir. That might have been so, but the abattoir supervisor's testimony did not dent that of the accused that these pens were not in existence the last time he visited the place. It could not be shown by the State that he was aware of the new policy at the abattoir of accepting animals over the weekend which had been disseminated through the print media. Neither did the state prove that he sold or killed some of the animals. The permit allowed him 4 days to reach his destination. It did not forbid him to keep his goats at any place along the way. As a matter of fact, the destination was yet before the Waterfalls plot that he kept the animals. He did not deviate from that destination. There was no basis, on the evidence led, for convicting the accused.

There is however a more fundamental error in the conviction. It arises from the wording of section 3 (1) (a) as read with section 3(2)(a) and section 5 of the Act, which in the relevant parts state:

“3 Animals, diseases and pests subjected to Act to be specified by Minister

(1) This Act shall, unless the Minister, in terms of subsection (2) or in the exercise of the power conferred upon him by section five, otherwise provides or the context otherwise requires, apply to—

(a) a member of a class or a class of vertebrate animal, domestic or otherwise; and

.....
.....

which is specified by the Minister in a statutory instrument

(2) The Minister may, in a notice referred to in subsection (1), specify—

- (a) a member of a class or a class of vertebrate animal referred to in paragraph (a) of that subsection as an animal for the purposes of this Act; and

5. Regulatory powers of Minister

(1) For the better eradication and prevention of the occurrence or spread within Zimbabwe and for the prevention of the introduction into Zimbabwe of diseases and pests the Minister may, by regulation, order or notice in a statutory instrument, do any or all of the matters or things specified in the Schedule.

(2) Nothing in this Act shall be construed as precluding the Minister, in the exercise of the power conferred upon him by subsection (1), from making provision for the eradication and prevention of the occurrence or spread amongst human beings of—

- (a) a disease common to human beings and animals; or

These provisions bestow wide ranging powers on the Minister. Before he can exercise any of these powers he is obliged to publish them by regulation, order or notice in a statutory instrument. He has in fact done so by promulgating the Animal Health (Movement of Cattle and Pigs) Regulations SI 280/1984, as amended by SI 168/1993 and SI 310/1993 and the Animal Health (Movement of Game Animals) Regulations SI 377/1984, as amended by SI 294/1995 and SI 325/2002. These two regulations are the only ones that have been made which require permits to move animals. These animals are cattle, pigs and some wild animals. The relocation of goats and sheep within Zimbabwe does not require movement permits.

In the result, the accused person did not break any law, as the permit that was issued was not a legal requirement. The trial magistrate ought to have acquitted him.

Before concluding, it is necessary that I address the issue of forfeiture and the satisfaction of the SPCA expenses. Even if the conviction had been correct, the trial magistrate misdirected herself in ordering forfeiture. The Animal Health Act does not provide for such a punishment. The Criminal Procedure and Evidence Act [*Chapter 9:07*], deals with forfeiture in section 61 and 62. Goats and sheep are not weapons, instruments or other articles. They do not qualify for forfeiture under these two sections. In any event, the fine imposed underscores the trivial nature of the offence. It simply does not warrant a forfeiture order.

Lastly, any expenses incurred by an authorized person, who is appointed in terms of section 20 (1)(b) are met by the Minister who administers the Act, the Minister of Agriculture. This is clear from the provisions of section 11 and 20(5) of the Act.

It is accordingly ordered that:

1. The conviction and sentence be and is hereby set aside.
2. The relevant authorities refund him the fine that he paid.
3. His animals are to be returned to him.

BHUNU J: agrees.....