

THE STATE
versus
MUCHAVENI TOMORI

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 11 June 2010

MATHONSI J: The accused was charged and convicted of 2 counts of contravening section 5 as read with s 30 (1) (a) of the Trapping of Animals Central Act, [*Cap 20:21*]. On the first count he had set up 30 wire snares at a ranch in Mwenezi belonging to Zimbabwe Bio Energy Company on 16 August 2009 and had caught 4 zebras valued at US \$4 000.00. The meat was recovered.

On the 2nd count he set up 6 snares on 3 November 2009 at the same farm and caught an impala valued at US\$500.00 which was also recovered. The learned magistrate found the accused guilty as charged and treating both counts as one for purposes of sentence, he sentenced the accused to 24 months imprisonment of which 6 months was suspended, for 5 years on condition of good behaviour. In addition, the magistrate ordered the accused to compensate the complainant in the sum of \$4 500.00 being the value of the animals. None of the sentence was suspended on condition of the restitution ordered.

Section 5 of the Act provides :

“Any person who makes, possesses or uses a class 1 trap for the purpose of trapping any animal shall be guilty of an offence and liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding 3 years or to both such fine and such imprisonment.”

The entire s 30 of [*Cap 20:21*] was repealed by s 4 of Act No 22 of 2001. Therefore the charge as it stands was defective and the magistrate should not have convicted accused person as charged . I have however decided to confirm the conviction because the wording of the charge does not offend the attainment of real and substantial justice to the extent that it does not prejudice the accused person.

It is the imposition of restitution as part of the sentence which is not in accordance with real and substantial justice. In the first place, all the meat was recovered and presumably restored to the complainant. Even assuming that the value thereof would be less than the value of live animals, it cannot be said that the complainant still lost \$4 500.00. If indeed it was necessary to retribute, what should have been ordered is the difference between the value of the live animals and the meat which was recovered and not the full \$4 500.00. No evidence was led to determine this value.

I have also noted that the magistrate did not suspend a portion of the sentence on condition of restitution and this was a misdirection.

For these reasons I order as follows:

- (a) That the conviction is confirmed.
- (b) That the sentence is confirmed only to the extent of the custodial term of an effective 18 months, and
- (c) That the order for restitution in the sum of US\$4 500.00 be and is hereby set aside.

MATHONSI J