

**THE STATE**

**Versus**

**ENOCK MOYO**

IN THE HIGH COURT OF ZIMBABWE  
NDOU J  
BULAWAYO 3 FEBRUARY 2011

Criminal Review

**NDOU J:** This matter was dealt with by a Beitbridge Magistrate and referred to me on automatic review. The accused was charged of undermining the authority of or insulting the President in contravention of section 33 (2) of the Criminal Law (Codification and reform) Act [Chapter 9:23], (the “Act”). The accused pleaded guilty and he was convicted and sentenced to 8 months imprisonment of which 4 months were suspended on the usual conditions of good future behavior. The major flaw in these proceedings is the learned magistrate’s failure to comply with the provisions of section 34 of the Act.

Section 34 states:

“34. Attorney General to authorize prosecution under Chapter 111

No proceedings shall be instituted or continued against any person in respect of a crime in terms of this chapter, other than proceedings in respect of the crime of possessing a dangerous weapon or unlawfully possessing or wearing a camouflage uniform or for the purpose of remand, without the authority of the Attorney General.”

*In casu*, the authority of the Attorney general was not sought and obtained. For the record, section 33 under which the accused was charged is in Chapter 111 of the Act. The accused person’s conduct is not an exception in terms of section 34.

It is very important that the magistrates and prosecutors be familiar with the provisions of section 34.

Accordingly, the conviction is quashed and the sentence set aside. Should the Attorney General decide to prosecute the accused afresh, the period already served shall be taken into account in any subsequent sentence. The accused is entitled to his immediate release.

Mathonsi J ..... I agree