THE STATE v TINASHE NYANGANYA	CRB 961/15
THE STATE v MAVHURA KAPASUWA	CRB B 780/15
THE STATE v GRACE BISHOP	CRB B960/15
THE STATE v KELVIN KANYUCHI	CRB C 210-11/15
THE STATE v PROMISE MUDARIGA	CRB 210-11/15
THE STATE v ESTHER KANGOYA	CRB B1797-8/13

HIGH COURT OF ZIMBABWE
MUSAKWA & MATANDA-MOYO JJ
HARARE, 3 June 2015

Review Judgment

MATANDA-MOYO J: The provincial magistrate sent the above matters for review. The above cases were dealt with by a magistrate who has since been suspended from employment. The same magistrate is facing criminal charges of abuse of office at Bindura Magistrates Court. He is currently on a warrant of arrest after skipping court remand.

In all the above cases the magistrate convicted the accused and sentenced them without giving reasons for such conviction and sentence.

It is improper for a court to find an accused, in particular an unrepresented accused guilty without furnishing reasons. An accused person has rights to know the reasons for his conviction. This assists the accused in deciding which mitigatory facts to place before the court before sentence is passed. Failure to so furnish an accused person with reasons for his/her conviction results in violation of the accused's right to a fair trial. In the case of *Kiewiet Batlaping and Two Ors* v *The State CA & R* 151/98 Vander Walt J at p 3 said:

> "The accused had an inherent right to know why they were convicted".

See all *Rex* v *Majerero and Ors* 1948(3) SA 1032(A) In the case of *State* v *Gerhardus Van Wyk* C 3151/04 the court had this to say:

> "A verdict is not an interlocutory decision, and should at all times be preceded by an indication of considerations, findings and conclusions of both law and fact deliberated by the court to substantiate its final judgment".

In the case of *Herminer Griffith* v *Gerald Niewenkirk* Criminal Appeal number 1/2004 the magistrate had convicted the appellant without giving reasons and at the time of the appeal she had emigrated from Guyana. The conviction and sentence were quashed. See also in *Alexander* v *Williams* (1984) 34 WIR 340. The court held that is a rule of law that in criminal

proceedings a court should provide its reasons especially when an accused has lodged an appeal. Where the magistrate or court imposes a custodial sentence it becomes imperative that such magistrate or court furnish reasons of sentence. Where deprivation of liberty is at stake reasons should be given.

Bernard JA in *Alexander* v *Williams (supra)* at p 349 had this to say:

> "a convicted person today is entitled to know the basis upon which a magistrate has arrived at the conclusion that the case against him has been phased and that thereby he should be deprived of his liberty. A convicted person who has been sentenced to a term of peremptory imprisonment cannot, in my view, repose any confidence in or have any respect for a system of justice which today allows a magistrate to deprive him of his liberty without the necessity for a statement of the reasons for this to be given by that magistrate, if that person should later choose to challenge the latter's decision by way of appeal".

Appeal and review are different procedures. Appeal is the appropriate procedure where a litigant contends that a court came to an incorrect decision whether on law or on facts. Review is "aimed at the maintenance of legality, being a means by which those in authority maybe compelled to behave lawfully". See *Pretoria Portland Cement Co. Ltd and Anor* v *Competition Commission & Ors* 2003 (2) SA 385 A @ 401 I to 402 C.

It is thus competent to quash the conviction and sentences on the basis of an infringement of the accused's right to fair trial as guaranteed by s 69 of the Constitution.

In the result the convictions and sentences are hereby set aside and fresh proceedings conducted before another magistrate.

MUSAKWA J: agrees ……..