

S v Zvokuomba	
Project code	ZIM
URL	https://zimlii.org/akn/zw/judgment/zwmsvhc/2021/34/eng@2021-06-16
Citations	(34 of 2021) [2021] ZWMSVHC 34 (16 June 2021)
Country	Zimbabwe
Date of judgment	16 June 2021
Court	Masvingo High Court
Location	Masvingo
Case type	Referral for sentence
Result	Declined/ Denied
Flynote	Human rights and fundamental freedoms - right to a fair trial- right to legal representation Sentencing - interpretation of sections 70 and 80(1)(c) of the Criminal Law (Codification and Reform) Act - minimum mandatory sentence of not less than ten years for engaging in sexual intercourse with a young person and exposing them to the risk of HIV transmission
Legislation and International Instruments	Legislation <ul style="list-style-type: none"> • Sections 255; 271(2)(b) and 228 of the Criminal Procedure and Evidence, Act • Sections 70(1) (a)and 80 of the Criminal Law (Codification and Reform) Act. • Section 29 of the High Court Act
Cases cited as authority	<ul style="list-style-type: none"> • <i>Pitty Mpofo and Samukelisiwe Mlilo v The State</i> CCZ 8/13 • <i>S v Tau</i> 1997(1) ZLR 93 (H) at 99 H
Facts	<p>The accused was charged with engaging in sexual intercourse with a minor in violation of section 70 of the Criminal Law (Codification and Reform) Act (the Act). The complainant, a 15-year-old girl, and the accused had consensual sexual intercourse at the accused's residence. The complainant's father reported the incident to the police, resulting in the accused's arrest.</p> <p>During the trial, it was revealed that the accused was HIV positive, while the complainant tested negative for HIV. The trial magistrate referred the case to the Prosecutor General because of the accused's HIV status. The accused could not be sentenced under section 70 but would instead be charged under section 80(1)(c) of the same Act. This section imposes a minimum mandatory sentence of not less than ten years for engaging in sexual intercourse with a young person and exposing them to the risk of HIV transmission.</p>
Summary	The court reviewed the case and noted that the accused was convicted by the trial magistrate based on a guilty plea. There were concerns that the accused did not fully understand the essential elements of the offense. The

	court also noted that the accused had no legal representation. Thus, he may not have comprehended the offence he was charged with. The judge emphasized the magistrate's responsibility to clearly explain the elements and inquire about the accused's knowledge of the complainant's age. Considering this serious error, the court held that the proceedings were unjust and ordered a new trial to be conducted before a competent magistrate.
Decision/ Judgment	The sentence was set aside.
Basis of the decision	The lower court failed to conduct a fair trial.
Reported by Date	Luxolo Tomsana 15 June 2023