

THE STATE

Versus

TAVENGWA MANIKWA

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 16 DECEMBER 2004

Criminal Review

NDOU J: The accused was properly convicted of contravening section 21(2) of the Exchange Control Regulations (as published in Statutory Instrument 109/96) as read with section 5(1)(a) (ii) and 5(4)(a) of the Exchange Control Act [Chapter 22:05]. The gravamen of the charge is that he unlawfully and without authority of the Reserve Bank of Zimbabwe, exported one hundred and forty (140) bricks of Kingsgate cigarettes from Zimbabwe to South Africa. In other words, he was required to complete a so-called CDI forms and apply for the necessary statutory authority from the Central Bank as the goods he was exporting were in excess of the limit for exportation of goods without the Reserve Bank Control authority. At the time of the offence such limit was \$50 000. The cigarettes were valued at \$6 047 500,00 so the statutory authority was required. In the circumstances, nothing turns on the conviction.

In terms of the Act, the learned magistrate was enjoined to enquire on the existence or otherwise of special reasons. This enquiry is mandatory on account of the findings that the trial court has to make. Section 5(4) of the Act required the trial court to impose a mandatory minimum fine in the absence of a finding of special reasons for not doing so. Section 7 requires the trial court to forfeit the unlawfully exported goods (where intercepted as in this case) to the state. With the benefit of hindsight the learned trial magistrate admits she erred by not canvassing the question of special reasons. She also agrees with me that interference with her sentence is inevitable in the circumstances. The sentence was imposed without having regard to the provisions of sections 5(4) and 7 of the Act. Special reasons were not investigated and as such no findings were made on whether they were present or absent. The fine imposed is less than the mandatory minimum. The forfeiture was made without affording the accused an opportunity to make submissions one way or the other on the question of special reason. He was prejudiced by such failure.

Accordingly, the conviction be and is hereby confirmed. The sentence imposed by the trial magistrate be and is hereby set aside. The matter is referred to the same magistrate for sentencing *de novo* with due regard to the provisions of the provisions of section 5(4) and 7 of the Act *supra*.

Cheda J I agree