

Judgment No. HB 66/2004  
Case No. HC 1274/04, HC  
1276/04 & HC 1278/04  
CRB REG 82/04, REG 97/04 &  
REG 119/04

**THE STATE**

**Versus**

- (1) COLIN GILL BRISTOW**
- (2) BRIAN ROSS**
- (3) BRIAN ARTHUR HUNTLEY-WALKER**

IN THE HIGH COURT OF ZIMBABWE  
NDOU J  
BULAWAYO 20 MAY 2004

Criminal Review

**NDOU J:** All three accused persons were convicted by the same trial Regional Magistrate sitting in the Western Division in Bulawayo. They were convicted in separate trials but I have dealt with them in this judgment because the issues that concern me are similar. The accused persons were convicted for illegal dealing in foreign currency in contravention of section 5(1)(a)(ii) of the Exchange Control Act [Chapter 22:05], as read with section 4(1)(a) of the Exchange Control Regulations as published in Statutory Instrument 109 of 1996. They all pleaded guilty and were duly convicted. Nothing turns on the convictions. In all the three cases the learned Regional Magistrate made a finding that special reasons were absent and duly imposed the minimum mandatory fine. Once more these findings cannot be faulted.

At the time of sentence the accused persons did not have the fines imposed and the Regional Magistrate afforded them time to pay the fines. It is the latter that I am concerned with.

Ross was sentenced on 29 March 2004 and he was afforded until 30 March 2004 to pay. Bristow was sentenced on 17 March 2004 and was afforded until 18

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March 2004 to pay. Huntley-Walker was sentenced on 2 April 2004 and was afforded until 3 May 2004 to pay. If these periods have not been extended, then by the time the matters found their way to my chambers the fines had already been paid.

Viewing section 5(2)(a)(ii) in the context of the Exchange Control Act as a whole, it is plain to me that the legislature was minded to impose severe deterrent penalties notwithstanding the hardships which might ensue. Any suspension of the payment of the minimum fine would be at variance with the intention of the law giver – *S v De Montille* 1979 RLR 105 (GB) at 107D-108D, *R v Kriel* 1938 CPD 561 and *R v De Klerk* 1939 EDL 181.

The learned Regional Magistrate should not have afforded these accused persons time to raise the fine. He did not enjoy the competency to do so. The accused persons must have either paid the mandatory fines imposed or serve the alternative. The sentence can therefore, not be allowed to stand as they are.

Accordingly, in all the three matters the convictions are confirmed but sentenced are altered by the deletion of the orders affording the accused persons time to pay. The rest of sentences otherwise confirmed.

Cheda J ..... I agree