

(1) THE STATE

Versus

VUSUMUZI NGWENYA - CRB 1057/05

(2) THE STATE

Versus

ISAU HONDORA - CRB 1054/04

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 8 DECEMBER 2005

Criminal Review

NDOU J: These matters were dealt with separately by the same Gweru magistrate. The issues raised in this judgment are similar and I have conveniently dealt with both matters in this judgment.

In Ngwenya case, the accused was found by the police transporting in his vehicle 2000 litres of petrol and 30 litres of diesel. The police demanded a permit to convey group I hazardous substances. He did not have one. He was charged and convicted. He was sentenced to a fine of \$1 000 000,00 or in default of payment 9 months imprisonment. The above mentioned fuel was declared to be forfeited to the state.

In the Hondora case, the accused was found in possession of 75 litres of petrol in a storeroom. He was convicted after he failed to produce a permit entitling him to possess a group I hazardous

substance. He was sentenced to \$500 000 or in default of payment 4 months imprisonment. In addition the fuel was declared forfeited to the state.

HB 126/05

In both matters the charges were for the contravention of section 17(1) as read with sections 21 and 2 of the Hazardous Substance and Articles Act [Chapter 15:05]. It is apparent that these sections do not create an offence. The penalty clause is section 33. Accordingly, the charge should have “as read with section 33”. However, the question of the citation is rendered academic by the fact that the convictions cannot stand on the basis of a different irregularity. I enquired from the trial magistrate whether the petrol and diesel have been declared group I hazardous substances by the Minister of Health and Child Welfare. Such declaration is required by the provisions of section 15. I have been unable to find a statutory instrument by the minister making such declaration. The trial magistrate informs me that she has been unable to find such a declaration. In the absence of such declaration the accused persons were not required to have a permit to possess the petrol or the diesel. In the circumstances the convictions cannot stand.

Accordingly, the convictions in both matters are quashed. The sentences are set aside.

Cheda J I agree