

Case No. HCA 20-21/03

FARAI NDUMISO ZULU

AND

NQOBIZITHATA KHUMALO

VERSUS

THE STATE

IN THE HIGH COURT OF ZIMBABWE

CHEDA AND NDOU JJ

BULAWAYO 9 OCTOBER 2006 AND 23 OCTOBER 2008

Mr K. Ncube for the appellant

Ms Sigauke for the respondent

Appeal

CHEDA J: This is an appeal against both conviction and sentence of the magistrate court sitting in Bulawayo.

The brief facts are that sometime in January 2003, first applicant was given a pistol by his young brother who claimed that he had obtained it from a beer garden and he took it to second applicant.

As they did not want to keep it they decided to sell it to one Thabani Sibanda.

They were arrested and charged under Section 4(2) (b) as read with section 14(1) (b) of the Firearms Act [Chapter 10:09]. They pleaded guilty, convicted and were each sentenced to 7 years imprisonment of which 2 years imprisonment was suspended on the usual conditions.

Their argument against conviction is that although they pleaded guilty the court a quo did not fully explain the charge to them, more particularly that the act prohibits the act of engaging “in the trade or business” of selling or transferring etc. of firearms. We have been referred to cases where these courts have emphasized the need for triers of facts to fully explain the essential elements of the charge being leveled against an unrepresented accused. The rationale for this, is that there are certain charges whose elements if not properly explained may deprive an unrepresented accused a defence.

Such is the case where the charge is complex.

In the present case applicant sold a pistol without a licence. This action is a contravention of the Firearms Act which stipulates that before a person can possess a firearm he should apply to the Registrar of Firearms for vetting. The offence is created

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when one not only possesses the firearm but goes further to sell it without authority to do so. To argue that a single act of selling a firearm does not amount to engaging in the business or trade of such firearms ignores the rationale of controlling the movement of firearms which can end up in wrong hands.

In my opinion, therefore, even a single act of selling a firearm without authority, to deal in firearms is for the purposes of the Act qualifies as engagement in such trade or business. Bearing in mind the rationale behind the prohibition of such acts, the court a quo was justified in applying a strict interpretation of the said section.

I find no merit in this argument.

With regards to sentence, applicants' argument has merit. The respondent has conceded this fact and the concession in my view, is that, it has been properly made. This is not a case where an enquiry as to the existence or otherwise of special circumstances should have been made. It is through this enquiry that the learned trial magistrate misdirected herself.

The correct sentence is clearly laid down in amendment number 22/2001 of the Firearms Act.

In conclusion, therefore, the conviction is confirmed but the sentence imposed by the court a quo is set aside and is substituted by the following:-

“\$200-00 or in default payment 20 days imprisonment.”

Ndou JI agree

Job Sibanda and Associates, appellants' legal practitioners
Attorney General' Office respondent's legal practitioners