

THE STATE

Versus

BEKHITHEMBA MSEBELE

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 23 SEPTEMBER 2010

Criminal Review

NDOU J: The accused was charged before a Western Commonage magistrate of the unlawful possession of a Star pistol with a magazine of three rounds in contravention of section 4(4) of the Firearms Act [Chapter 10:09] (herewith referred to as “the Act”). He was convicted after admitting the charge in a summary trial. The learned magistrate carried out an enquiry on the existence or otherwise of special circumstances. He did not find any and sentenced the accused to “mandatory” sentence of 5 years. It is clear that the learned trial magistrate did not check or at least read the Firearms Act before the trial. If he had done so, he would have realized the following flaws.

First, subsection (4)(a) of section 4 only deals with the unlawful possession of ammunition. For the unlawful possession of the Star pistol, the accused should have been charged with a contravention of section 4(1) as read with (2) of the Act. Second, the maximum penalty is now “a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.”

Third, the mandatory sentence of five years was done away by Act number 22 of 2001. The enquiry on the existence of special circumstances was an exercise in futility. Because of these material flaws, the conviction and sentence cannot stand. To do justice in the circumstances, I have quashed the conviction, set aside the sentence and order a trial *de novo* before a different magistrate.

It is accordingly ordered that the conviction is quashed and the sentence be set aside. The accused to be tried afresh before a different magistrate.

Kamocha JI agree