

**BOKANI NCUBE**

**VERSUS**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
MATHONSI J  
BULAWAYO 14 NOVEMBER 2011 AND 17 NOVEMBER 2011

Criminal Appeal

**MATHONSI J:** The appellant was convicted by the regional magistrates' court for Hwange of one of rape and sentenced to 14 years imprisonment of which 3 years imprisonment was suspended for 5 years on condition of future good behaviour. He appealed against both conviction and sentence.

Before the matter was set down for argument, the Attorney General's representative conceded the appeal and gave notice to the registrar in terms of section 35 of the High Court Act [Chapter 7:06] that he does not support the conviction. The matter was then placed before me for consideration.

Section 35 of the High Court Act provides as follows:

"When an appeal in a criminal case, other than an appeal against sentence only, has been noted to the High Court, the Attorney General may, at any time before the hearing of the appeal, give notice to the registrar of the High Court that he does not, for the reasons stated by him, support the conviction, whereupon a judge of the High Court in chambers may allow the appeal and quash the conviction without hearing argument from the parties or their legal representatives and without their appearing before him."

I have gone through the record of proceedings and submissions made by counsel and I am of the view that the concession made has been properly made as the conviction of the appellant is indeed unsafe.

Accordingly I order as follows; that

- (1) The conviction of the appellant be and is hereby quashed.
- (2) The sentence of the appellant is hereby set aside.

*Phulu and Nucbe*, appellant's legal practitioners  
*Criminal Division, Attorney General's Office*, respondent's legal practitioners