

THE STATE

VERSUS

FILMEN CHINHOVO

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 30 JUNE 2011

Review Judgment

CHEDA J: This matter was referred to me on review as is the usual procedure.

Accused was charged with contravening section 10 of the Copper control Act [Chapter 14:06] commonly referred to as "Failure to give satisfactory account of possession of copper".

The allegations against the accused are that on the 21st January 2011 at Beitbridge Border post he was found in possession of 197.2kgs of copper. He failed to give a satisfactory answer regarding his possession thereof to the Zimbabwe Revenue Authority resulting in the seizure of the said copper.

He pleaded guilty to the offence and was sentenced to \$400 or 4 months imprisonment.

I noticed that the accused was sentenced without the court having had sight of the notice of seizure from (Zimra) Zimbabwe Revenue Authority. It was important as it is a necessary requirement that the court be in possession of such information as it is through it, that the court would know the value of the copper and/or potential prejudice suffered by the complainant.

To sentence the accused without such information is a serious misdirection on the part of the learned trial magistrate. Therefore, to allow it to stand will be a miscarriage of justice.

In my opinion this cannot be allowed to stand and accordingly the following order is made:

- (1) The conviction is confirmed but the sentence is set aside.

Judgment No. HB 72/11

Case No. HCAR 381/11

CRB B 123/11

- (2) The matter is referred back for sentence before the same magistrate to consider sentence in accordance with the provisions of the copper Act [Chapter 14:06] and decided cases.

Kamocha J agrees.....