

THE STATE  
**versus**  
ISAAC MHLANGA

HIGH COURT OF ZIMBABWE  
TAKUVA J  
BULAWAYO 27 AUGUST 2015

Criminal Review

**TAKUVA J:** This matter came before me on automatic review in terms of section 57 (1) of the Magistrates Court Act [Chapter 13:11] (The Act).

The facts are that on 3 March 2015, the accused was convicted of

- (1) Negligent driving and
- (2) Culpable homicide.

In addition to the penalty imposed for count two, the accused was prohibited from driving all classes of motor vehicles for a period of 2 years.

On 6 March 2015, in clear defiance of this order, the accused was observed by detectives at Lupane Business Centre driving a Toyota Hiace registration number ACQ 679. He was arrested at Matshabalala Service Station for contravening section 49 (2) (b) of the Act. He appeared in court and was duly convicted and sentenced to 18 months imprisonment.

Nothing turns on the conviction which I confirm. However, the sentence is incompetent for the simple reason that section 49 (2) (b) (i) (ii) of the Act does not permit the imposition of a sentence in excess of 12 months where the accused is not prohibited from driving during his lifetime. The section states:

“49 (2) A person who, whilst prohibited from driving, whether in terms of this Act or section 5 of the Road Motor Transportation Act [Chapter 13:10] or a law in force in a country outside Zimbabwe on grounds which would be a cause for prohibition from driving in terms of this Act or that section –

- (a) ---
- (b) drives on a road a motor vehicle or, if the prohibition from driving is limited to the driving of motor vehicles of a particular class, a motor vehicle of such class;

shall be guilty of an offence and liable, subject to subsection (4) –

- (i) in the case of a person prohibited from driving otherwise than during his lifetime, to imprisonment for a period not exceeding twelve months; or
- (ii) in the case of a person prohibited from driving during his lifetime, to imprisonment for a period not exceeding two years;” (my emphasis).

In *casu*, the accused had been prohibited from driving for a period of two years. Therefore, the sentence should not exceed twelve months imprisonment. The sentence of eighteen (18) months imprisonment imposed by the trial magistrate is incompetent.

Accordingly, that sentence is set aside and the matter is remitted to the trial magistrate who is directed to recall the accused and sentence him afresh.

Takuva J.....

Makonese J agrees.....