

**THE STATE**

**Versus**

**TENDAYI SOLOMON MASHANGWE**

IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J  
BULAWAYO 3 JUNE 2021

**Criminal Review**

**MAKONESE J:** It is an established principle of sentencing that once a court convicts an accused person and elects to impose a term of imprisonment whether such imprisonment is an effective term or is wholly or partially suspended, a court may not impose another separate distinct and stand-alone prison term for the same single count. Imposing an additional prison term for the same count amounts to sentencing an accused person twice for the same offence.

The accused appeared before a magistrate at Lupane on 20<sup>th</sup> November 2020 facing one count of driving a motor vehicle without a valid drivers' licence in contravention of section 6 (1) (a) as read with section 6 (5) of the Road Traffic Act (Chapter 13:11). The accused pleaded guilty to the charge and was duly convicted. At the time of the commission of the offence accused was driving a Toyota Haice commuter omnibus with four passengers on board. Accused was driving a public service vehicle without a valid licence. The offence attracts a minimum mandatory sentence of 6 months imprisonment unless there are special circumstances warranting the imposition of a lessor sentence. The trial magistrate in the court *a quo* determined that no such special circumstances existed. In sentencing the accused, the learned magistrate imposed a sentence of 6 months imprisonment. In addition, a further 6 months was suspended for 5 years on the usual conditions of future good conduct.

The scrutinising Regional Magistrate queried the sentence, pointing out that the accused had been sentenced to two stand-alone sentenced for the same offence. The learned trial magistrate commented as follows:

“... I though in the absence of special circumstances as in this case, having fulfilled the lower limit of 6 months imprisonment, I could suspend the other 6 months on condition of good behaviour”.

The learned magistrate clearly erred in his approach to sentence. It was not competent to impose a separate and distinct sentence of 6 months, though suspended, once he chose to impose the minimum mandatory sentence prescribed by the Act. The sentence of the court *a quo* is irregular as the accused was sentenced twice for the same and single count.

In the circumstances the additional suspended sentence of 6 months cannot be allowed to stand. It is ordered as follows:

1. The conviction be and is hereby confirmed.
2. The effective sentence of 6 months imprisonment shall stand.
3. The additional sentence of 6 months suspended on the usual conditions is hereby set aside.

Mabhikwa J ..... I agree