**SYDNEY HWITI**

**Versus**

**DZIMURI ESQ.**

**(In her capacity as Judicial Officer and Magistrate)**

**And**

**THE STATE**

**(Represented by the National Prosecuting Authority)**

IN THE HIGH COURT OF ZIMBABWE

TAKUVA J

BULAWAYO 19 MAY AND 4 AUGUST 2022

**Application for Review**

 *J. Mbandeni*, for the applicant

No appearance for the 1st respondent

No appearance for the 2nd respondent

**TAKUVA J:** This is a review application arising from criminal proceedings and therefore anchored on the provisions of sections 26 and 27 (1) (c) of the High Court Act Chapter 7:06 as read with Rule 62 of the High Court Rules S.I 202/2021.

**BACKGROUND FACTS**

On the 30th of January 2022, the applicant was driving his employer’s vehicle registration No. ADS 1099 along Bulawayo – Victoria Falls Road. At the 335 km peg he was involved in a road traffic accident in which the motor vehicle driven by the applicant collided with another motor vehicle as a result of which that other vehicle suffered certain damages. Following the accident, applicant was charged with contravening section 52 (2) of the Road Traffic Act Chapter 13:11 “Negligent Driving.” He appeared before the 1st respondent, pleaded guilty and was convicted in terms of section 271 (2) (b) as read with section 273 of the Criminal Procedure and Evidence Act. Applicant was sentenced to “pay a fine of ZWL$35 000-00 or in default of payment 4 months imprisonment. In addition, 4 months imprisonment which is wholly suspended for 5 years on condition accused does not during that period commit any offence involving negligent driving for which upon conviction he is sentenced to imprisonment without the option of a fine. In addition accused is hereby prohibited from driving all classes of vehicles for a period of 24 months and his licence (No. 62600 JZ) is hereby cancelled.”

Aggrieved applicant filed this application complaining that the proceedings in the court *a quo* are afflicted by gross irregularities in the following ways;

a) Failure to comply with section 163 A of the Criminal Procedure and Evidence Act Chapter 9:07 in that the applicant was not fully informed of the likely consequences of declining the rights espoused therein, particularly where the consequences are far reaching.

b) Failure to alter applicant’s guilty plea to that of not guilty after it became apparent that the plea was not unequivocal.

c) Failure to advise applicant of the penalty and meaning of special circumstances at the beginning of the trial and not after conviction.

The applicant sought his conviction by the court *a quo* under case number HWNP 35/22 to be set aside and the matter be remitted to the court *a quo* for a trial *de novo* before a different Magistrate. The respondents did not oppose the granting of this relief and the matter was placed before me in motion court. I postponed it pending the views of another Judge in terms of the proviso to section 27 (5) (b) of the High Court Act Chapter 7:06.

Having gone through the record of proceedings I am satisfied that indeed gross irregularities as outlined above were committed by the court *a quo*.

In the circumstances, it is ordered that;

1. The applicant’s application be and is hereby granted.

2. The conviction and sentence of the applicant by the court *a quo* on the 2nd February 2022 under case number HWNP 35/22 be and is hereby set aside.

3. The matter be and is hereby remitted for a trial *de novo* before a different Magistrate.

4. There will be no order as to costs.

 Takuva J………………………….

Moyo J………………………………… I agree

*Masiye-Moyo and Associates Inc. Hwalima; Moyo & Associates*, applicant’s legal practitioners