

**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 1<sup>st</sup> respondent  
No appearance for the 2<sup>nd</sup> 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 30<sup>th</sup> 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 1<sup>st</sup> 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 2<sup>nd</sup> 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