

THE STATE  
versus  
ELTON MANGOMA

HIGH COURT OF ZIMBABWE  
BHUNU J  
HARARE 16 May 2011 and 18 May 2011

**Assessors:** 1. Mr. Chivanda. 2. Mr. Mhandu

*C. Mutangadura*, for the State.  
*B Mtetwa*, for the defense.

### **Criminal Trial**

BHUNU J: The accused is the Minister of Energy and Power Development. In the main count he is alleged to have directed one of his subordinates Griefshaw Revanewako to purchase 5 million litres of diesel without going to tender in contravention of s 30 of the Procurement Act [*Cap 22: 14*] as read with sections 5 (4) (a) (ii) and 35 of the procurement regulations [S.I. 171 of 2002].

Mr. Justin Mupamhanga the Ministry's permanent secretary gave evidence on behalf of the state. Under cross-examination he was subjected to the following questions by Mrs. *Mtetwa* counsel for the defense.

“Q. Now Mr. Mupamhanga in your statement you accept that on or about 11<sup>th</sup> January 2011 there was a crisis in the fuel sector in the country.

A. That is correct.

Q. How did that crisis come about.

A. That resulted from the difficulties at Beira which led to ships bringing fuel not being able to dock. A major reason however, was that there were no supplies from our traditional suppliers.

Q. Your suppliers are in the NPC.

A. No my Lord

Q. Who are your traditional suppliers.

A. I am talking of those from whom oil companies in Zimbabwe buy from. This includes IPG of Kuwait, Trafigura, Glencore, Litasso.

Q. You say these are your traditional suppliers.

A. Among others.

Q. But you say they are not in your National Procurement Committee NPC.

A. These my Lord are international fuel refiners or suppliers they are not registered in Zimbabwe.

Q. So a crisis arose because you had not taken into account possible shortages with your traditional suppliers is that what you are saying.”

Arising from that line of questioning the witness went on to state that there is an approved list of foreign fuel suppliers. The alleged approved list of foreign suppliers had however not been annexed to the charge sheet.

The prosecutor now seeks leave to clarify the existence or otherwise of the approved list of foreign fuel suppliers under re-examination. The application is vigorously opposed on the basis that the proposed list is unknown to the defence. Its introduction will therefore be prejudicial to the defence case because it had prepared its case without taking into account that list.

The purpose of re-examination was ably articulated by Hoffmann and Zeffertt, *South African Law of Evidence*, third Edition at p363, where the learned authors state that:

“The main purpose of re-examination is to enable the witness to explain matters of which his answers in cross-examination are thought to have left a misleading impression. Questions must therefore be confined to matters arising from the cross-examination. If a witness has been cross-examined on part of a statement which he made, orally or in a document, he may be re-examined on as much of the rest of the statement as is necessary to explain the portion elicited in cross-examination or the motive with which the statement was made. He may not however, be re-examined on other parts of his statement unconnected with the matters referred to in cross-examination...”

It is self evident as I have already demonstrated above that when cross-examining the witness defence counsel elicited answers which adverted to the existence of an approved list of foreign fuel suppliers. The witness went on to enumerate some of the names of such suppliers. What this means is that some of the names of such foreign suppliers have already been permanently placed on record

That being the case the state is entitled as of right to clarify through re-examination the veracity of its witness' statement elicited during cross-examination regarding the existence or otherwise of the disputed approved list of foreign fuel suppliers. Doing otherwise will amount to muzzling the state. Having come to that conclusion the application can only succeed. It is accordingly ordered that:

1. The application for leave to re-examine the witness on the existence or otherwise of the approved list of foreign fuel suppliers be and is hereby granted.
2. That the defence be and is hereby granted leave to amend its case in line with the new issues arising from such re-examination.

*The Attorney General's Office, the State's Legal Practitioners.  
Mtetwa & Nyambirai, the defendant's legal practitioners*