

THE STATE  
versus  
VINGIDZAI GANI

HIGH COURT OF ZIMBABWE  
HUNGWE J  
HARARE, 22 February 2012

### **Criminal Review**

HUNGWE J: The accused was charged with contravening s 4(1) as read with s 4(1) (a) of the Firearms Act [*Cap 10:09*]. He was convicted on his own plea. Nothing turns on the conviction.

He was sentenced to 36 months imprisonment of which 6 months was suspended for 3 years on conditions of good behaviour.

The agreed facts surrounding the commission of the offence charged are that a police team proceeded to the accused residence in Gadzema, Chinhoyi, to conduct a search for property allegedly stolen by the accused in the course of a robbery in and around Chinhoyi. The search yielded a Pietro Beretta pistol serial number 818902 as well as eight rounds of ammunition. The fire arm had been stolen from Mhangura during a robbery.

When I queried why the minimum mandatory sentence was not imposed, the magistrate indicated that he erred in failing to do so as to mandatory sentence was supposed to be imposed. He also confirmed that no special circumstances were invited from the accused.

As matters stand, the accused has been discharged from prison having completed the sentence previously imposed on 27 March 2003. This court on review may quash the sentence imposed and remit the sentence for sentencing afresh by the trial court. It will then direct that the sentence imposed takes into account that already served by the accused till the date of his discharge. This court may alternatively set aside the sentence imposed in error and pass the appropriate sentence if the accused is unable to, at this late stage, offer any special circumstances.

However either course of action is, in my view, unfair to an accused person who has undergone the rigours of imprisonment. It is sufficient if the delay resulting in the failure to

take an appropriate course of action timeously, is deprecated. Attention to act promptly in remitting records on review cannot be over emphasised. Had the record been sent on review within the statutory seven days and had this court acted without seeking the magistrates views, in all probability the appropriate remedial actions consistent with the letter and spirit of the law would have been taken.

It will be salutary at this stage to refuse to certify the proceedings as being in accordance with real and substantial justice. I therefore withhold my certificate.

HUNGWE J: .....