

Judgment No. S.C. 104/83 Crim Appeal
No. 189/83

THE ATTORNEY-GENERAL v (1) BRIGHTON MATEWERE (2)

GREENSON HANNINGS MUHANGO

SUPREME COURT OF ZIMBABWE,
GEORGES, CJ BECK, JA & GUBBAY, JA,
HARARE, OCTOBER 4, 1983.

M. Werrett, for the appellant,
K.J. Van Huyssteen, for the first respondent
K. Terry, for the second respondent

GEORGES, CJ: In this matter we have carefully considered the arguments which have been advanced on the issue as to whether or not the Notice of Appeal in this case is satisfactory. We conclude that Grounds 2, 3 and 4 are obviously much too vague. Ground 3 in particular it is conceded is merely a statement of fact and not at all a ground of appeal; Ground 2 does no more than state the consequences of the decision by the magistrate and Ground 4 merely states that he erred in refusing to grant a postponement of the trial but does not specify that in so doing there was any error of law.

It is quite clear that the Attorney-General in this case has not considered adequately the principle specified in R v Emerson & Ors 1958 (1) SA 442 (SR) in which JUSTICE BEADLE, as he then was, stated

"It is safe, however, to go thus far. If a ground of appeal is that the magistrate erred in law this should be stated and the particular mistake in law which the magistrate is alleged to have made should be set out."

We agree with the general proposition advanced by Mr Van Huyssteen that where the appeal is one by the Attorney-General under s. 69 of the Magistrates Court Act it is even more important that the precise error in law should be stated and the question from which an answer is sought from this Court should be carefully drawn up. Indeed, speaking for myself I was somewhat surprised that even at this stage the attorney-general did not appear to have carefully formulated the question to which a

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reply was required, in this case.

We do think, however, behaving in a spirit of great generosity, that the first Ground of Appeal can raise an issue of law and we have ourselves formulated this issue to read thus:-

"Is a magistrate entitled in law when considering an application for a remand to have regard to the merits of the prosecution's case against the accused?"

This is a question which, I think, raises an issue of law to which we can give a reply.

Before replying to the question, however, we would wish to know whether or not the magistrate did in fact consider the merits of the prosecution's case. Accordingly, having formulated this question we will dispatch it to the magistrate and ask for his comments. When these comments are received the matter will be placed again on the roll for argument.

It should perhaps also be noted that Ground 5 has not been pressed and for that reason no comment has been made upon it.

BECK, JA: I agree,

GUBBAY, JA: I agree,

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Sawyer & Mkushi, first respondent's legal representatives. Stumbles & Rowe, second respondent's legal representatives.