

Judgment No. S.C. 53/85  
Crim. **Appeal** No. 231/85

SALAH ABDUL v THE STATE

SUPREME COURT OF  
ZIMBABWE, HARARE, JUNE  
18, 1985.

Before GUBBAY, JA, in Chambers, in terms of s 23(1)  
of the Supreme Court of Zimbabwe Act, 1981.

The papers in this matter were placed before me on an application for leave to appeal in person against two convictions entered at separate trials for contravening s 5(1) of the Road Motor Transportation Act [Cap 262]. The allegations were that on 8 February 1985 and again on 29 March 1985 the applicant operated on the Esigodini Road, Bulawayo, a motor vehicle to wit an Opel station-wagon, registration no. 39-653A, for the carriage of persons for hire or reward without, being in possession of a valid Road Service Permit in respect of the said vehicle .

Both trials were presided over by the same magistrate. At the first, on 9 May 1985, the applicant, in answer to the charge, is recorded as saying

"I was carrying two people front seat; four in rear seat; two in boot; children friends, I did not cause them to pay any money."

At the second, on 13 May 1985, the applicant said the following

"I was carrying eight passengers and I was the ninth. My wife and her sister in front. My wife's two teacher friends on rear seat. Two other unknown persons who asked for a lift. My children two in the boot. The strangers did not pay any consideration,"

At each heading the prosecutor submitted that by virtue of s **5(2)** of the Act the applicant's explanation amounted technically to a plea of guilty. This was not so. Section **5** merely creates a presumption that the applicant was carrying his passengers for hire or reward. It was open to him to prove the contrary. The magistrate, however, accepted the prosecutor's submission and in each trial entered a plea of guilty, convicted the applicant and sentenced him respectively to fines of \$20 and \$40.

The Attorney-General has reported that the convictions are not supported by the State, His concession is clearly correct.

The CHIEF JUSTICE agrees that the convictions and sentences must be set aside and it is so ordered. The cases are remitted to the magistrate for retrial on **pleas** of not guilty. He is to inform the applicant of the effect of s, **5(2)** of the Road Motor Transportation Act [**Cap 262**] and give him the opportunity of rebutting the **presumption**.