THE STATE

Versus

1) **YENZANI HEINECKE – PLUMTREE CRB 665/07**

2) **CHRISTOPHER MPOFU – PLUMTREE CRB 663/07**

3) **ZAMBEZI NDLOVU – MADLAMBUZI CRB 91/07**

4) **MIKA SIBANDA – MADLAMBUZI CRB 92/07**

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 20 SEPTEMBER 2007

Criminal Review

NDOU J: All the matters were dealt with at Plumtree Magistrates' Court. The learned trial magistrate convicted the accused persons in separate trials of *inter alia*, contravening section 26(1) of the National Incomes and Pricing Commission Act [Chapter 14:32] "i.e. failing to comply with a directive or requirement regarding the reduction of prices". They were each sentenced to similar punishment of $200 000,00 or in default thereof 20 days imprisonment. After the sentences were imposed the trial magistrate checked the enabling legislation [she should have done so even before the charges were put to the accused persons]. She realised the problem of checking at this late stage and concluded that the convictions were wrong and addressed a minute to the Registrar of this court in the following terms:

> "Accused persons in the above matters were convicted and sentenced under the National Incomes and Pricing Commission Act Chapter 14:32 on charges of over pricing and failing to display prices. Of concern are the counts of over pricing i.e. contravening section 26(1) (e) of the said Act. After dealing with these matters it later came to my attention that the order regarding reduction in prices was issued on the 6 July 2007. These offences were committed on 1 July 2007 before the order was made …"

I agree with the learned trial magistrate that these convictions cannot stand and should be quashed. I am, however, concerned about the timing of the investigation of the suitability of the charges. This enquiry should take place before the commencement of the proceedings and not after sentence. This is important because the accused can easily serve a prison sentence for an offence that does not exist. In statutory offences the trial magistrate must check if the enabling Act creates such an offence. If so, whether the accused's conduct constitute the offence defined in the statute. The trial magistrate should not blindly assume that the statute creates an offence and that the accused person's conduct falls within the ambit of the offence. This is a casual approach which should be discouraged. It has the potential of grave prejudice to the accused person. There is a need to interfere with convictions in these matters.

In *S* v *Yenzani Heinecke, supra*, the conviction in count 2 is quashed and the sentence therein is set aside. The conviction and sentence in count 1 are however, confirmed. In *S* v *Christopher Mpofu, supra*, the convictions in counts 1 and 2 are quashed and the sentences therein are set aside. The conviction and sentence in count 3 are confirmed. In *S* v *Zambezi Ndlovu, supra,* the conviction in count 2 is quashed and the sentenced therein is set aside. The conviction and sentence in count 1 is confirmed. In *S* v *Mika Sibanda* the conviction is quashed and the sentence set aside. Accused persons to be refunded the fines in respect of the counts quashed.

Cheda J ……………………………….. I agree