THE STATE

Versus

ANYWAY GOREDEMA – CRB 926/06

JOSIAH MBURENI – CRB 42/05

FRANKLIN CHENGETA – CRB 2377/05

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 20 MARCH & 15 MAY 2008

Criminal Review

NDOU J: The accused persons were convicted by three different magistrates for being found in possession of goods in regard to which there is a reasonable suspicion that they were stolen. I have dealt with all these matters under this judgment as they give rise to similar problem. They were convicted for contravening section 12(2) of the Miscellaneous Offences Act [chapter 9:15]. [This offence has been re-enacted by section 125 of the Criminal Law (Codification and Reform) Act, [chapter 9:23]. In all these three matters the accused persons pleaded guilty to charges. The trial magistrates proceeded in terms of section 271(2)(b) of the Criminal Procedure and Evidence Act [chapter 9:07] and after questioning the accused the trial magistrates found the accused persons guilty on the basis of their pleas. The issue is whether it was competent to convict the accused persons of the offence without leading evidence. This issue was ably dealt with by CHINHENGO and CHATIKOBO JJ in *S* v *Chiwonda* 1999(1) ZLR 407 (H). I associate myself with reasoning of the learned Judges. They correctly held:

> "… that one of the essential elements of the offence under S 12(2) of the Miscellaneous Offences Act is that the person finding the accused in possession of the goods formed a reasonable suspicion that the goods were

stolen. The obligation for the accused to give a reasonable explanation for his possession of the goods only arises if there is evidence that the person finding

him in possession had a reasonable suspicion that the goods were stolen. …, further, that the procedure under S 271(2)(b) of the criminal Procedure and Evidence Act requires that the accused makes admissions. The accused can only admit to facts known to him. It is absurd in plea proceedings to ask the accused if he admits that the person finding him in possession of the good had a reasonable suspicion that the goods were stolen. The accused cannot know what was in the mind of the person who found him in possession. The person who found him in possession of the goods should testify about the basis upon which he formed his suspicion that the goods were stolen. It is on the basis of this testimony that the court can evaluate whether the suspicion was reasonable or fanciful. Held, therefore, that the court cannot find an accused guilty of this offence without evidence being led from the person who found the accused in possession about what led him to believe that the goods were stolen. The basis upon which the finder formed his suspicion is not a fact known to the accused and not a fact to which he can admit". See *S* v *Chitsinde* 1982(2) ZLR 91(S) at 98C-G and 99A; *S* v *Ganyu* 1977(2) RLR 97 (A) at 104G; *S* v *Kasara* HH-527-87 and *S* v *Dube & Anor* 1988(2) ZLR 385 (S) at 390A-B.

In the circumstances, the convictions cannot stand in these three matters.

Accordingly, I quash the convictions in all the three matters, set aside the sentence and remit the matter for trial *de novo* before different magistrates. It is so ordered.

Bere J …… I agree