

**THE STATE**

**VERSUS**

**FILMEN CHINHOVO**

IN THE HIGH COURT OF ZIMBABWE  
CHEDA J  
BULAWAYO 30 JUNE 2011

Review Judgment

**CHEDA J:** This matter was referred to me on review as is the usual procedure.

Accused was charged with contravening section 10 of the Copper control Act [Chapter 14:06] commonly referred to as “Failure to give satisfactory account of possession of copper”.

The allegations against the accused are that on the 21<sup>st</sup> January 2011 at Beitbridge Border post he was found in possession of 197.2kgs of copper. He failed to give a satisfactory answer regarding his possession thereof to the Zimbabwe Revenue Authority resulting in the seizure of the said copper.

He pleaded guilty to the offence and was sentenced to \$400 or 4 months imprisonment.

I noticed that the accused was sentenced without the court having had sight of the notice of seizure from (Zimra) Zimbabwe Revenue Authority. It was important as it is a necessary requirement that the court be in possession of such information as it is through it, that the court would know the value of the copper and/or potential prejudice suffered by the complainant.

To sentence the accused without such information is a serious misdirection on the part of the learned trial magistrate. Therefore, to allow it to stand will be a miscarriage of justice.

In my opinion this cannot be allowed to stand and accordingly the following order is made:

(1) The conviction is confirmed but the sentence is set aside.

- (2) The matter is referred back for sentence before the same magistrate to consider sentence in accordance with the provisions of the copper Act [Chapter 14:06] and decided cases.

Kamocha J agrees.....