

SERGEANT NHODZA R. 049759A
versus
THE TRIAL OFFICER (SUPERINTENDENT NDLOVU)
and
THE COMMISSIONER GENERAL OF POLICE

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 20 FEBRUARY 2018 AND 22 MARCH 2018

Opposed matter

R Ndou for the applicant
L Msika for the respondents

MOYO J: The applicant filed an application for review seeking an order to set aside the decision of the trial officer who convicted him and sentenced him on 2 February 2015. At the hearing of this matter following a concession, I granted the order sought. I now provide the reasons herein.

The facts of the matter were that the applicant stopped a bus which carried some Zanu Pf delegates to a conference. He required a permit for such a mission, which permit the driver did not have. It is not clear from the facts for how long the bus was stopped.

The charge sheet and the state outline are not part of the record of proceedings so it is not clear as to what exactly was the applicant's offence. However, from the testimony of the state witnesses it would appear as though the problem was why the applicant had stopped a bus carrying Zanu Pf delegates to a conference as if that fact meant that he should have let the bus go without stopping it. It would appear as if that was the thrust of the state case. This is gleaned from the testimony of Majayi Jengwa the bus driver who said that they thought that since their buses were escorting Zanu Pf delegates they were not liable to pay any fines. This is at page 9 of the court record. Even the bus driver was asked if he was happy with the way applicant had treated him and he said he was not happy although the applicant was doing his job. It would thus appear as if the bone of contention was stopping a bus carrying Zanu Pf delegates and subjecting it to normal police checks and routines. In his findings however, the trial officer correctly stated

that, the mere fact that they were Zanu Pf delegates was not an issue. He also correctly found that as the police, they deal with customers irrespective of their political affiliation. The trial officer later also made a finding that the accused was correct in arresting the bus crew and that once arrested he was duty bound to immediately dispose of them by making them pay a fine or arranging that they pay later. He then makes a finding that this was not done. This is where the problem is, the facts as to whether the bus driver and the applicant discussed about arrangement on the payment of a fine are not in the court record. The bus driver does not say he had no fine on his person and could pay later No, the bus driver seemingly expected no liability to pay a fine under any circumstances since he was carrying Zanu Pf delegates. That is what the driver says for himself. So the trial officer could thus not make a finding that the accused failed to make arrangements with the bus driver on when and how the fine could be paid yet the bus driver who was the state witness says he challenged the liability to pay a fine on the basis that he carried Zanu Pf delegates. On this point, the trial officer fell into error by making a factual finding on an issue where no evidence was led. Even the trial officer asked the applicant some questions but did not ask the specific question on an arrangement being made for the bus driver to pay the fine later. The trial officer nonetheless proceeds to conclude on that point which was never canvassed on the facts. The trial officer in this regard fell into a fatal error because he read unproven facts into the court record and then made findings with regard thereto formulating the basis for convicting the applicant.

The second issue is that the record of proceedings shows that after the trial officer pronounced a verdict of guilty as charged with no reasons, there is no judgment but only the verdict: Guilty as charged. This is on page 17 of the court record. Then there is a record of previous convictions.

Then there is mitigation and sentence. The sentence overlaps into the next page of the court record, page 18 where it is stated that the accused is sentenced to USD10-00.

Thereafter, there is a recording that:

“Accused indicated that he wanted to appeal against judgment and sentence. Procedure of appeal explained to accused.”

Then below that, comes the inscription “Judgment”. The judgment is then written underneath. The impression that one gets looking at this court record, is that the trial officer convicted and sentenced the accused person and only wrote a judgment thereafter upon an indication by the accused that he intended to appeal. This is a gross irregularity that is fatal to these proceedings in that

- 1) The accused was convicted without reasons.
- 2) The judgment and reasons that later followed should then have been tailor made to suit the verdict no wonder why the trial officer reads into the court record non-existent facts.
- 3) A judgment arrived at with no reasons, runs the risk that the decision maker would not have applied his/her mind to the facts before him.

A judgment should be well reasoned out on the facts and on the law, showing precisely how the decision maker wove his/her way through the issues at hand. Judging first without reasons, creates a danger that the trial officer went through the trial with a mind made up that the accused must be convicted at all costs. It therefore arouses the suspicion of bias especially in this case where the trial officer goes on to read non-existent facts into the court record.

A look at the facts of this case, and the whole court record, shows that the police as an organization are using untrained police officers as trial officers. Clearly, the trial officers are not equipped with the appropriate legal knowledge and the technical know-how required of how to conduct a trial. Clearly, the trial officer in this case committed serious and fatal irregularities. In the circumstances one would want to believe that perhaps an in-depth training is needed for these officers before they conduct these kind of matters especially considering that such a trial is subjected to the stringent test of a criminal trial. The proceedings were grossly flawed warranting that they be set aside.

It is for these reasons that I granted the order as sought.

Mugiya & Macharaga Law Chambers, applicant’s legal practitioners
Civil Division, Attorney General’s Office, respondents’ legal practitioners