

THE STATE
versus
MISHECK MANZIYO

HIGH COURT OF ZIMBABWE
HUNGWE J
HARARE, 27 March 2013

Criminal Review

HUNGWE J: The proceedings in the above matter were placed before me on review together with an explanatory letter by the Trial Magistrate. In it he requests for a quashing of the proceedings and a trial *de novo*. I quote the learned magistrate's letter which sets out the reasons for this request verbatim.

“May it be highlighted that the matter was before me in Court on 31 January 2012. The accused pleaded guilty to the offence of assault whereby it was said he threw stones at the complainant and hit him once on the hand and on the head. There were no injuries to the complainant; the complainant was not medically examined. This shows that the assault was not serious.

A procedure under s 271 2(a) of the code was followed leading to conviction of the accused person. No medical report was produced by the State. See para 4 of the State outline marked annexure A. I have now learnt through the prosecutor in charge Mr Goredema that the police deliberately withheld evidence, i.e. the medical report and did not make it part of the state docket. See his affidavit – Annexure B attached. It all came to the open after the complainant complained to the prosecutor in charge. The State outline shows that the complainant was not medically examined and no medical report was produced. That was brought to attention of DISPOL.

The State outline and charge sheets I used in court on 31 January 2012 show different facts to the ones found at police station and I have also attached these new ones marked exh 1 and 2 respectively now showing that a machete had been used to strike the complainant. There is now a photocopy provided by the public prosecutor in charge marked exh 3 for easy reference. The public prosecutor in charge applied for Trial *De novo*.

I was misled by the State through the evidence led or produced, no medical report was produced and we followed s 271 2(a) of the code. This procedure I summarily in nature and it's for offences not requiring a custodial term. Basing on these wrong facts, I sentenced accused to a fine of \$20/30 days imprisonment. I convicted and sentenced accused on wrong facts and scenario. May the proceedings be quashed and a trial *de novo* be ordered. Justice must be seen to done”.

The learned trial magistrate is correct in making the request for a quashing of the proceedings and an order for a trial *de novo*.

It is therefore ordered as follows:-

1. The proceedings in CRB 88/12 be and are hereby quashed.
2. A fresh trial before a different magistrate be and is hereby ordered.
3. A copy of this judgment is to be served on the Attorney-General for further investigations regarding the conduct of the Police Officers and, law officers, if any, involved in the suppression of evidence.

MAVANGIRA J, agrees