

Judgment No. S.C.54/85 Crim. Appeal
No.247/85

JOSPHAT MUTEMERI GWISAYI v THE STATE

SUPREME COURT OF ZIMBABWE,
HARARE, JUNE 20, 1985.

Before: McNALLY, JA in Chambers, in terms of Section 23 of the Supreme
Court of Zimbabwe Act, No 28 of 1981.

This matter has come before me by way of an application for leave to appeal in person, I believe it can more conveniently and appropriately be dealt with as a review matter in the exercise of my powers of review under Section 23 of the Supreme Court of Zimbabwe Act, No 28 of 1981.

The applicant was given a "ticket" in Bulawayo for "stopping at a bus stop". He was invited to pay a \$10 deposit fine. He did not do so. He was then charged with "contravening section 23(2) of the Bulawayo (Road Traffic) Bye-Laws, GN97/78 in that upon or about the 29th day of December 1985 and at or near Bulawayo in the said Province the accused did wrongfully and unlawfully park a motor vehicle to wit Taunus Registration number 306-736H upon a parking place designated for omnibus only, that is at Southwold Bus Stop".

The correct section is 23(1) (a), the correct government notice is 96 of 1978 and the correct year is 1984. These are perhaps matters of detail. But, more importantly, the applicant says he tried to plead not guilty on the basis that he was not parked at the bus stop but about thirty metres away. He says "I then

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"appeared in court and I denied the charge. Without the evidence the Magistrate merely said I found you guilty even before I presented my case."

The magistrate recorded a plea of guilty, but the applicant's allegation is confirmed by the magistrate's reasons for sentence. He says "From facts I have canvassed with you I find that your plea is a technical plea of guilty". This clearly shows that although the applicant was

attempting to plead not guilty the magistrate regarded his plea as amounting to a plea of guilty.

It is fairly clear that the magistrate, perhaps as a result of haste, misunderstood the applicant's plea.

He recorded the applicant as saying, by way of plea, "I was waiting for a friend at the bus stop". He went on to ask "were you in vicinity of bus-stop?". The answer was "yes". He then recorded a plea of guilty, entered a verdict of guilty and imposed a fine of \$15 or 15 days' imprisonment with labour.

The offence is to park "upon a designated parking- place". "Parking-place" is defined as a place "designated by means of yellow boundary lines. Obviously one may park "in the vicinity of a bus-stop" without parking within the yellow boundary lines. Equally obviously, that is the defence the applicant wished to put forward. He was never given an opportunity to do so.

In the circumstances, and by way of review, the plea, conviction and sentence are set aside. The fine paid is to be refunded to the applicant. If the State elects to proceed afresh on the charge I would suggest that the errors to which I have referred should be corrected. The relevance of section 67(1) of the Regulations should also be noted.

BECK, JA agrees.