

Judgment No. 2/87

Crim. Appeal No. 279/86

THE ATTORNEY-GENERAL v (1) RINOTI CHINAKA JASI
(2) WILSON WILLIAM NHARINGO

SUPREME COURT OF ZIMBABWE HARARE, JANUARY 27, 1987.

Before: McNALLY, JA, In Chambers, in terms of s 23 of the Supreme Court of Zimbabwe Act 1981.

This matter comes before me by way of a request from the Attorney-General that I should exercise my powers of review to set aside the sentences imposed by the magistrate.

The facts are these: The two accused persons were convicted, on a plea of guilty, of contravening s 47(3) as read with s 47(5) as read with s 34, of the Parks and Wild Life Act, No.14 of 1975. The convictions were apparently in order. The offence concerned the unlawful sale of ivory.

The magistrate appears to have overlooked the mandatory minimum penalties introduced on March 1986 by Act No. 35 of 1985. For this reason the Attorney-General was given leave by me to appeal against the sentences imposed, which were, in each case, a fine of \$500 or in default five months' imprisonment with labour.

The Attorney-General has now pointed out that if the appeal comes before this Court, as it is due to do on 3 March 1987, the Court will need to know what the position is with regard to special circumstances, since the mandatory minimum sentence need not be imposed where the magistrate finds special circumstances. The Act requires him to record the facts, if any, justifying the imposition of a lesser penalty.

In the circumstances the Attorney-General suggests that it would be more appropriate to deal with this matter by way of review at this stage.

It seems beyond argument that the magistrate erred in overlooking the amendment to the legislation and accordingly I agree that it is a waste of time to have this question argued before the full Court. Moreover, there can be no prejudice to the accused persons in taking the course which I propose to take. The sentences were incompetent in the absence of a finding of special circumstances.

Accordingly, in the exercise of my powers of review under 23 of the Supreme Court of Zimbabwe Act, and with the concurrence of GUBBAY, J., I hereby set aside the sentences imposed by the trial magistrate and remit the matter to him for an investigation into the question of special circumstances and for re-sentencing in the light of that investigation.

A copy of this judgment should be sent to the first respondent and to the second respondent's legal practitioner, as well as to the attorney-General.