

1.THE STATE  
versus  
NKULUMANI MOYO

CRB L172/15

2.THE STATE  
versus  
MPILO NCUBE

CRB L173/15

HIGH COURT OF ZIMBABWE  
CHIKOWERO & KWENDA JJ  
HARARE, 29 January 2020

Criminal review

CHIKOWERO J: Moyo and Ncube, on separate records, appeared before the same magistrate.

The date was 21 July 2015.

Both pleaded guilty.

Each faced a charge of contravening s 45 (1) (b) of the Parks and Wildlife Act [*Chapter 20:14*], possession of a python skin without a permit.

Having convicted them, the Magistrates Court at Lupane sentenced each to the “mandatory” 9 years imprisonment. In addition, the python skins were forfeited to the State.

The proceedings were duly confirmed as being in accordance with real and substantial justice by a single judge of this court on 29 September 2015, no issues arise concerning the convictions. The records have been returned for further review on the back of the appeal judgment in *Tatenda Mhango, Brighton Ngwenyama and Kudzai Ruvangu Shava v The State* HMA 33/19.

Section 128 of the same Act, on the basis of which the 9 years imprisonment was imposed, as the Court *a quo* found no special circumstances in respect of each matter, does not even arise for consideration.

The reason is this. In neither case was the accused charged for contravening s 45 (1) (b) of the Act as read with s 128 of the same Act.

So the competent sentence in each case was that provided for under s 45 (2) of the Act: a fine not exceeding level eight or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

An exhaustive analysis of the sentence appropriate in each case, at this stage, would be an exercise academic.

Both accused have already served custodial sentences in excess of the maximum three years fixed by parliament.

This means both are entitled to immediate release; they need not pay the fine that I will substitute for the custodial sentence imposed *a quo*.

But the forfeiture orders shall remain. Those are appropriate.

I therefore order as follows:

1. The conviction of each accused is certified as being in accordance with real and substance justice.
2. The 9 years imprisonment imposed on each accused is set aside.
3. In place thereof, each accused shall pay a fine of \$100 in default of payment each shall serve 6 months imprisonment.
4. The forfeiture orders shall remain undisturbed.

The Registrar of the High Court is directed to forthwith issue warrants of liberation of both accused.

KWENDA J I agree