

**THE STATE**

**VERSUS**

**ONASSIS SITHOLE**

IN THE HIGH COURT OF ZIMBABWE  
CHEDA J  
BULAWAYO 7 FEBRUARY 2013

Review Judgment

**CHEDA J:** The above record was forwarded to me for review as per the usual procedure. The accused was charged as follows;

“count 1- driving without a licence as defined in section 6 of the Road Traffic Act [Chapter 13(11)].

Count 2 – contravening section 49 of the Criminal Law Codification and Reform Act [Chapter 9:23] as Read with section 64 of the Act [Chapter 13 (11) (Culpable Homicide)”

The brief facts are that the accused a 19 year old boy was arrested for driving a class 4 motor vehicle without a driver’s licence. On the 20<sup>th</sup> July 2012 around 1700hrs while carrying 2 passengers he drove along, Tsholotsho –Mbamba road, Matabeleland North when this accident happened. Upon approaching the 11km peg, he lost control of his motor vehicle an Isuzu KB, Registration number ABK 3665. The vehicle overturned throwing out a passenger, who died on the spot. He pleaded guilty to the offence and was sentenced as follows

“count 1 – US\$200 or in default payment 4 months imprisonment

Count 2 – US\$ 400 or in default of payment 6 months imprisonment”

The trial magistrate did not investigate or address his mind with regards to the prohibition of driving which is a requirement for such type of offence.

In that regard it is clear that there was a misdirection on the part of the learned trial magistrate.

The matter is accordingly referred back to the same magistrate for the determination of an appropriate sentence in terms of the Road Traffic Act.

The following order is made:

**Order**

- (1) The conviction is confirmed, and
- (2) The matter is referred back to the trial magistrate to determine a proper sentence after following the correct procedure in terms of the Road Traffic Act.

Cheda AJ agrees.....