PATRICKNHAMO NJANIKE
versus
THE STATE

HIGH COURT OF ZIMBABWE
HUNGWE & BERE JJ
HARARE, 20 January 2015

**Concession in terms of section 35 of the High Court Act, [*Cap 7:06*]**

*J. Terera,* for the appellant
*E. Mavuto*, for the respondent

HUNGWE J: The appellant was charged with two counts of contravening sections of the Masvingo City Council Traffic By-Laws; one count of contravening s 72(1) of the Road Traffic Act, [*Cap 13:11*]; and one count of contravening s 53(2) of the same Act. He pleaded guilty to the first three offences but denied that he had driven recklessly in contravention of s 53 (2). After a contested trial in respect of the latter charge he was found guilty and sentenced to 2 years imprisonment.

The appellant disputed the factual findings by the trial court which apparently relied on the two arresting details in order to convict the appellant. The attack on the factual findings were well-taken considering the fact that there are several material inconsistencies in the state case itself. For example, the state outline alleges that the appellant sped off at high speed and later made a U-turn in front of an on-coming vehicle. The police were in pursuit. They blocked his way such that the other driver whose lane was blocked almost collided with appellant. The police witnesses say the appellant then drove away but later on approached the police station where he was charged with these offences. The magistrate accepted the uncorroborated version of the State without questioning its authenticity. The police could have secured the testimony of the driver who they say appellant had blocked as he made

U-turn. Even more credibly, the police could have secured the evidence of any other disinterested observer since, as they say, the appellant drove negligently in full view of the public. Failure by the state to secure available independent witnesses to testify to the material dispute on a charge of this nature rendered the matter one upon which the state relied on the evidence of a single witness notwithstanding that the two police witnesses testified.

I make the observation in light of the fact that the appellant, from the outset, disputed this charge. He admitted the rest. Wisely, the state conceded that there was no proof beyond reasonable doubt. *R* v *Difford* 1937 AD 370. It was the appellant's word against that of the police. In my view the concession was proper. As such the conviction is liable to be quashed and the sentence set aside. In the result, I make the following order.

1. The appeal against conviction and sentence in respect of count 4 is allowed.
2. The verdict in the court a quo in respect of that count is altered to read:

   "The accused is found not guilty and acquitted."
3. The sentence in respect of that count is consequently set aside.
4. The rest of the proceedings are otherwise confirmed.

BERE J agrees:…….

*Mwonzora & Associates*, Appellant's Legal Practitioners
*National Prosecuting Authority,* Respondent's Legal Practitioners