

**In the matter between:**

**CHU, DUC MANH**

**APPELLANT**

**and**

**STATE**

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**SUMMARY**

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**WILLS J:**

**Appeal against Sentence**-the Appellant is an adult male age 30, married with two children. He was charged with one count of contravention of section 15 (15) (b) read with sections 1, 81, 87 (1) and 95 of the Customs and Excise Act, No. 91 of 1964 in that he failed to declare the possession of 12 rhinoceros horns weighing 60,607 kilograms value at R913 385.00. He was, in addition, charged with a contravention of section 57 (1) read with sections 1, 56, 57 (1),101 (a) and 102 of the National Environmental Management- Bio-Diversity Act No. 10 of 2004 read with Government Gazette 31899 Volume 524 in that he was in possession of the relevant rhinoceros horns without being in possession of a permit.

On 4 August 2011,the learned Regional Magistrate, Mr Manyate sentenced him to 2 years imprisonment on count 1 and 10 years imprisonment on count 2, which resulted to the effective sentence of 12 Years imprisonment. He was granted a leave to appeal against his sentence on 13 August 2011.

The Court found that, the learned Magistrate did commit two misdirections:

1. that he failed to take into account the long period that the Appellant had been awaiting trial for 13 months;
2. he also referred to the fact that the Appellant was part of a syndicate, which on the criminal standard the Magistrate was not entitled to make such inference.

The Court stated further that, these misdirections, minor though, does call for interference and both offences are closely linked to one another which provide a compelling argument for ordering their concurrency.

The appeal was upheld to the limited extent that the sentence of imprisonment on count 1 is to run concurrently with the sentence on count 2. In other words, the effective sentence is 10 years imprisonment.