

THE STATE

Versus

GODFREY MADAVA

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 13 FEBRUARY 2003

Review Judgment

CHEDA J: This case was referred to me by the regional court for review.

The accused is 34 years old and a member of the Zimbabwe National Army was charged with 2 counts of attempted murder. The brief facts are that accused went into the complainant's homestead looking for Benjamin Phiri who is the complainant in the 1st count. He knocked at the door but there was no response. In the hut was Benjamin Phiri and Kissmore Phiri, sleeping. He proceeded to set the hut on fire. Property worth \$1 830 was destroyed and the occupants managed to escape unhurt. He pleaded guilty to both charges and was sentenced to pay a fine of \$10 000 on each count, thus a total of \$20 000 or 3 years imprisonment with labour. In addition 3 years imprisonment with labour was wholly suspended for 5 years on the usual conditions.

I queried the propriety of this sentence with the trial magistrate who responded as follows:

“On (sic) in assessing sentence I considered that the accused is employed and that imprisonment was going to mean loss of his job and extended suffering of his dependants. Indeed the crime accused was convicted of is a serious one which almost invariably attracts imprisonment but for the above stated reasons and that accused and the complainants knew each other I decided to impose the sentence I imposed”.

The sentence is not only against common sense but decided cases. Two counts of attempted murder on innocent and unsuspecting complainants can not justifiably attract sentence of a pecuniary nature. To do so is to trivialise the offence and shakes the confidence of right thinking members of our society. The role of the court is to see to it that justice is done between man and man.

Judiciary officers have been reminded time and time again to apply their minds in their work in order to come up with reasoned decisions which will meet the expectations of both the offender and the offended. The sentence imposed by the learned trial magistrate flies in the face of the justice which the court was trying to achieve.

This sentence can not be allowed to stand and as such I am unable to certify it as being in accordance with real and substantial justice.

Cheda J