

THE STATE

Versus

OSWALD MUGADZA – CRB 2944/04
TICHAONA MURAMBI – CRB 2941/04
WELCOME GUMBO – CRB 2931/04
STEPHEN NYAZARA – CRB 2928/04

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 30 DECEMBER 2004

Criminal Review

NDOU J: These matters were all dealt with by the same magistrate sitting in Gweru. The scrutinising Regional Magistrate, Central Division, was not satisfied with the conduct of the proceedings. There is merit in his observation. These matters are characterised by elementary errors. Mugadza was convicted of theft by false pretences of Chronicle newspapers valued at \$4 000,00. In brief, he went to the Chronicle offices in Gweru and pretended that he was an employee of Zimbabwe Electricity Supply Authority and thus managed to steal newspapers intended for the said parastatal. Nothing was recovered. He was sentenced to \$200 000 or in default thereof 20 days imprisonment.

Murambi stole a refuse bin valued at \$70 000,00 which was recovered. He was sentenced to \$100 0,00 or in default thereof 30 days imprisonment. Gumbo was convicted of malicious injury to property. In an argument with a barman over a mug of beer the accused picked stones and threw them at the bottle store and deliberately smashed two window panes and the top part of a counter. The value of the damage was \$250 000. He was sentenced to \$200 000,00 or in default thereof of 20 days

imprisonment. Nyazara stole welding rods valued at \$350 000,00 at his place of employment. All were recovered.

For the trial magistrate to impose the fines reflected above, he was required to have conducted the summary trial in terms of section 271(2)(b) of the Criminal Procedure and Evidence Act [Chapter 9:07]. These sentences, the fines in particular are incompetent once the trial magistrate conducts the pleas of guilty in terms of section 271(2)(a) of the code. These fines are beyond level 3, so the section 271(2)(a) procedure is inappropriate. With the benefit of hindsight the trial magistrate concedes that he indeed erred.

From the facts of each case outlined above it is clear that the pleas in these matters should have been conducted under section 271(2)(b) of the code. The moral blameworthiness of the accused persons in each of these matters does not warrant minor punishment. This was indeed confirmed by the sentence imposed by the trial magistrate. From his response it is apparent that the trial magistrate is not sure when to use either of these procedures. Before embarking on section 271(2)(a) route a magistrate must bear the following-

- “(a) the nature of the charge, especially as it appears from the particulars of the offence;
- (b) the penalties to which the accused would be liable on conviction;
- (c) the complexity of the charge and the accused’s ability to understand it;
- (d) any informal explanation given by the prosecutor on aspects which the court may legitimately be informed before conviction;
- (e) the fact that the procedure is intended to be used only for minor offences and should not be used where there is any doubt as to the minor nature of the offence.” (emphasis added)

Criminal Procedure in Zimbabwe – John Reid Rowland 17-3 see also *S v Meinie*; *S v Van Zyl* 1972 (2) RLR 250(G); *S v Wall* 1981 ZLR 261(G); *S v Honde & Ors* HB-27-91 and *S v Sibanda*; *S v Nkala*; *S v Siphuma* HB-156-04. As the fines are in excess of

that permitted by the provisions of the section I feel that the reduction of the fines to the maximum fines allowed will meet the justice of the cases. Remittal for trial *de novo* would not be in accordance with justice because all the accused persons served the alternative sentence of imprisonment. On account of the delay in submitting the matters on review they have already served their full prison sentences.

Accordingly, the convictions in all the four matters be and are hereby confirmed. The sentence in each case be and is hereby set aside and substituted as follows:

1. **S v Oswald Mugadza**
 \$25 000 or in default of payment 20 days imprisonment.
2. **S v Tichaona Murambi**
 \$25 000 or in default of payment 30 days imprisonment.
3. **S v Welcome Gumbo**
 \$25 000 or in default of payment 20 days imprisonment.
4. **S v Stephen Nyazara**
 \$25 000 or in default of payment 60 days imprisonment.

Cheda J I agree