

THE STATE

Versus

PRINCE NCUBE

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 8 DECEMBER 2005

Criminal Review

NDOU J: The accused was convicted of assault with intent to do grievous bodily harm by a senior magistrate sitting at Nkayi. Nothing turns on the conviction. He was sentenced to a fine of \$200 000 or in default thereof 2 months imprisonment plus an additional imprisonment of 2 months suspended for 5 years on condition of good behaviour. The scrutinising Regional magistrate, Western Division, is not satisfied with the propriety of sentence. The scrutinising Regional Magistrate's concern is captured in the following passage from his minute:

“The facts are to the effect that the accused had differences with the complainant when they met in village 2 St Elizabeth n Inyathi. The accused is alleged to have directed the thrust of an axe he was holding to the face of the complainant on the mouth causing him to lose 4 front teeth. The facts are not clear whether he hit the complainant with the blade or handle of the axe. In spite of this, the fact remains that this was a brutal assault. The medical affidavit is to the effect that the bridge of the complainant's nose got fractured.

It says the injuries were serious and that severe force was used.

The injuries were described as permanent. It is surprising to note

HB 123/05

that the learned trial magistrate sentenced the accused person to a paltry fine of \$200 000 or 2 months imprisonment. In this matter sentence of 2 years or more was called for. I feel that the sentence is extremely lenient for it is out of proportion with the gravity of the offence.”

Notwithstanding the accused’s youthfulness, I agree with the learned regional Magistrate. The youth started criminal life in the deep end of the pool a custodial sentence was called for. The complainant was a juvenile aged 16 years at the time.

Accordingly, I am unable to certify the proceedings as being in accordance with real and substantial justice.