PETRONELLA TIWANDIRE

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
CHEDA & NDOU JJ
BULAWAYO 21 MARCH & 8 DECEMBER 2005

C P Moyo for appellant
Mkwananzi for respondent

Criminal Appeal

CHEDA J: This is an appeal against both conviction and sentence. Appellant and the complainant were married to each other until 8 September 2003. The parties had agreed that appellant should collect clothes from the matrimonial home. On 8 September 2003 appellant proceeded to the former matrimonial home and collected the said clothes but found the complainant absent although his brothers were present. They refused her permission to collect the clothes. A scuffle ensued which resulted in appellant breaking a window pane valued at $18 000. She was charged with malicious injury to property to which charge she pleaded guilty was convicted and sentenced to 3 months imprisonment.

She now appeals against both conviction and sentence. It is her argument through her legal practitioner that the court did not properly explain to her what her guilty plea really meant. The court proceeded in terms of section 271(2)(b). This section requires the

court to put the facts of the case to the accused and further explain the essential elements of the charge.

On perusal of the record it is clear that, this was done. Explanation of the facts and essential elements are to be done in a reasonable way the court can. It is not the intention of the legislature that the court should do it in such a way, tantamount to using a fine tooth comb. The object of this requirement is to ensure that the accused does not admit to a charge which for all intents and purposes did not commit. The aim is definitely not to encourage him to deny the charge which is at the time obvious but most importantly knows he committed. These courts have a set type of questions which have been accepted through common practice and which have now been accepted in the day to day usage in our courts. We are satisfied therefore that the procedure and line of questioning adopted by the court *a quo* was enough to establish the accused's guilty beyond reasonable doubt. It, therefore, cannot be faulted. The conviction is accordingly confirmed.

It has also been submitted by Mr *Moyo* that the sentence imposed induces a sense of shock. We have equally examined this submission which is supported by Mr *Mkhwananzi* for respondent. This concession is indeed proper. The sentence therefore deserves interference.

The said sentence is accordingly set aside and is substituted by the following:

"$50 000 or 1 month imprisonment."

Ndou J ..... I agree

Messrs Majoko & Majoko appellant's legal practitioners
Criminal Division, Attorney-General's Office, respondent's legal practitioners