

THE STATE

Versus

NHAURO CHITOTO

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 21 APRIL 2005

Criminal Review

NDOU J: The accused person was brought before a provincial Magistrate sitting at Gweru Provincial Magistrates' Court facing a charge of theft. He pleaded guilty to the charge and was sentenced to a fine of \$1 000 000,00 or in default of payment 15 months imprisonment. In addition he was sentenced to 10 months imprisonment all of which was suspended on the usual conditions of compensation. The accused was properly convicted and nothing turns on the conviction. I am concerned about the propriety of the sentence. The background facts are that in the period extending between 29 October 2004 and 3 November 2004 and at Plot 33A Montrose, Gweru the complainant had left his borehole pipes in his yard. The accused stole these pipes and sold some of them. On 3 November 2004 the accused was arrested by police officers carrying three of the stolen pipes. On being questioned the offence was detected. The 78 metres of the stolen pipes is valued at \$27 372 264,00 and value of the recovered pipes is \$12 062 353,00. Factors in the accused's favour were mainly that he is a first offender, married with two children and was in gainful employment. These had to be weighed against the value of the property, the prevalence of the offence of theft of agricultural equipment due to demand created by the land reform programme, scarcity of such equipment and that

HB 36/05

recovery was not as a result of change of heart on the part of the accused but as result of police effort. Further, he stole these pipes in order to sell them. The accused is known to the complainant. The learned trial provincial Magistrate did not assess all the factors properly. The end result is that the accused got away with an inappropriate lenient sentence. The scant reasons for sentence do not provide any information on why such a lenient sentence was imposed. In *S v Mpofo* HB-73-03, CHEDA J emphasised the necessity of giving reasons which at the end of the day will justify the imposition of either a harsh or a lenient sentence.

The moral blameworthiness of the accused is very high in this matter. The value of the stolen property is very high. A substantial portion of the stolen property has not been recovered and chances of recovery are very slim. The determination of an equitable quantum of punishment must chiefly bear a relationship to the moral blameworthiness of the offender – *S v Shariwa* HB-37-03. In *casu*, over emphasising the accused's personal circumstances and under estimating his moral blameworthiness constitutes a misdirection on the part of the trial court. In the absence of special factors a sentence in the region of three years with part suspended was called for. The sentence imposed here does not fit both crime and the offence, be fair to the state and to the offender and be slended with a measure of mercy – *S v Sparks and Anor* 1972(3) SA 396 (A), *S v Moyo* HH-63-84; *Zindoda v S* AD 15-79 and *S v CM (a juvenile) and Anor* HB-67-03.

Accordingly, I am unable to certify the proceedings as being in accordance with true and substantial justice and I withhold my certificate.