

THE STATE

Versus

COSMAS MPOFU – CRB 3215/06
RUTH NDLOVU – CRB 3124/06
TINEYI MAFEMA – CRB 3192/06
SMAUEL DUBE – CRB 3223/06

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 12 OCTOBER 2006

Criminal Review

NDOU J: The accused persons were all convicted and sentenced by the same Bulawayo Magistrate in different trials of theft (as defined in section 113(1) of the Criminal Law (Conditions and Reform) Act [Chapter 9:23]) and nothing turns on the convictions. As far as sentence is concerned, the learned scrutinising Regional Magistrate observed:

“They all have the same error. On sentencing, the trial magistrate suspended a portion of the sentence “on condition of good behaviour” on each of these matters. That which is called good behaviour is not specific in the sentence. It is therefore difficult to bring into effect any of these suspended sentences in case these accused commit other offences later ...”

I agree with the learned scrutinising Regional Magistrate. It is trite that the condition or conditions of suspension imposed must be clear, simple and specific. In other words, conditions of suspension must be clearly expressed and must clearly relate to the offences of which the accused has been convicted – *S v Taylor* 1971(3) SA 86(R); *S v Fourie* 1973(4) SA 232 (N); *S v Chitsike & Anor* HH-155-88 and *S v Maruza & Ors* GS 249-80. See also *A Guide to Sentencing in Zimbabwe* G Feltoe at 39-40. The conditions must be appropriate to the crime and stated with such precision that the accused clearly understands the ambit of the condition – *Criminal procedure*

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in Zimbabwe by John Reid Rowland at 25-46. The formulation of suspension must not be vague. Appropriate wording should be used to ensure that the accused knows exactly what he or she must do to avoid the suspended sentence being brought into operation – *R v Edward* 1966 RLR 555(A); *R v White* 1968(2) RLR 7(A); *S v Tshuma* 1983(1) ZLR 129(H) and *S v Pienaar* 1973(1) RLR 112(A).

In the circumstances, I agree with the scrutinising Regional magistrate that the formulation here is vague and is not clearly expressed and does not clearly relate to the offence of theft. The learned trial magistrate, with the benefit of hindsight, concedes that she erred in her formulation of the suspended sentences.

Accordingly, the convictions are confirmed in these matters. The sentenced are however amended by the deletion of the words “of good behaviour” wherever they appear and substituted with the words “the accused in that period does not commit any offence of theft or dishonesty and”. The proceedings are otherwise confirmed.

Cheda J I agree