

Judgment No. HB 116/06  
Case No. HC1807/06  
CRB V/Falls 83/06

**THE STATE**

**VERSUS**

**CHIPOKE KAMEYA**

IN THE HIGH COURT OF ZIMBABWE  
NDOU J  
BULAWAYO 26 OCTOBER 2006 AND 2 NOVEMBER 2006

Criminal Review

**NDOU J:** The accused was properly convicted by a Victoria Falls magistrate of assault with intent to do grievous bodily harm.

Nothing turns on the conviction. He was sentenced to a fine of \$2 000 000-00 (old currency) or in default of payment 15 months imprisonment. In addition, he was sentenced to 6 months imprisonment wholly suspended for 5 years on conditions of good future behaviour.

The accused was sentenced on 19<sup>th</sup> February 2006, and the record was only sent for review on 13<sup>th</sup> May 2006, with no explanation for the delay. Unfortunately when I queried the delay, I was informed that the trial has since left the service and the country. Be that as it may, review records must be submitted timeously that is within a week. Where this statutory period is not achieved, at least an explanation should be given for the dilatoriness. It should not be left to the reviewing Judge or scrutinizing regional magistrate to raise a query on the delay – Sections 57 and 58 of the Magistrates Court Act [Chapter 7:06]; *R v Saretiye* 1949 SR 212. Such delays are common place these days.

The objective of automatic review is to ensure that every accused person who is sentenced above the statutory limit automatically enjoys the benefit of an enquiry of his or

her conviction and sentence by a senior judicial officer, that is, a regional magistrate or a High Court Judge. The scrutinising regional magistrate or reviewing Judge is enjoined to satisfy himself or herself that the proceedings meet the requirement of being in accordance with real and substantial justice. One of the fundamental object of the review system is defeated when records are submitted very late, that is the system will fail to provide a curb on any misdirected or arbitrary exercise of power, unless it is administered efficiently and speedily – “Criminal Procedure in Zimbabwe”, by JR Rowland at 26-4 to 26-5 and *R v Leggate* 1941 SR2.

In *S v Lindo* HH 149-03, UCHENA J said, at pages 5-6 of his cyclostyled judgment:-

“Magistrates at trial and scrutiny levels should ensure that the urgency with which records are to be prepared for scrutiny and review as provided by Sections 58(1) and 57(1) of the Magistrates Court Act is complied with. The record of proceedings should within a week be sent for review as scrutiny. As soon as a record is received for scrutiny or review it should be timeously attended to by the Scrutinising Regional Magistrate or Reviewing Judge. If this is not done the need for urgently sending records for review at scrutiny may be frustrated and mistakes which should be corrected by the review or scrutiny proceedings will take long to be corrected as happened in this case. Persons wrongly convicted or sentenced will continue to serve their sentences. The injustice which should be corrected by the scrutiny or review procedures will continue for longer than anticipated by Sections 57(1) and 58(1) of the Magistrates Court Act”. I agree with my brother.

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Coming back to propriety of the sentence, the relevant facts are the following:

The incident took place in Chinotimba Township, Victoria Falls when people were celebrating the outgoing year 2005 and the incoming year 2006. The complainant was celebrating whilst at his home with his family. The accused and his friends were drinking beer and dancing at the house of the complainant's neighbour. One of the accused's friends relieved himself on the hedge of complainant's house. The complainant was naturally, not amused resulting in him reprimanding the culprit. This did not go down well with the accused who started to insult the complainant. The accused went on to draw a knife from his pocket and stabbed the complainant with it. He stabbed the complainant once on the head, once on the mouth, once on the nose, once on the left hand and four times on the back. The degree of force used is described by the doctor as moderate and the resultant injuries as serious.

Further, the doctor opined that there is a likelihood of permanent disability on two of the areas where blows landed. This attack is altogether unprovoked and took place before the eyes of members of the complainant's family. It is said a man's home is his castle. The sentence imposed trivialises a very serious assault. This is a callous attack on the person of another calling for a sentence of imprisonment without the option of a fine. The accused is young man aged 22. Unfortunately, the record does not reveal the age of the complainant, but being a family man I can safely assume that he is much older than the accused.

In *S v Rosary* HH133-83; the court held that for an assault by a young first offender comprising of three stabbings in back and stomach, one year imprisonment was appropriate. In *S v Ndlovu* HH 197-87, the accused stabbed an

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ex-girlfriend once in the stomach with severe force causing serious injury. A sentence of 6 months imprisonment was considered appropriate. In *S v Murombo* HH 224-87 the accused stabbed the victim twice on the shoulder with moderate force. He was a first offender and a sentence of 8 months imprisonment with half thereof suspended on condition of future good behaviour was considered appropriate. In *S v Razawu* HH 257-87 the accused was drunk at the time of the offence. He was also provoked. He stabbed his wife twice in the face and side but not seriously. A sentence similar to that in the Murombo- case, *supra*, was considered appropriate. – See also *S v Nyoni* HB 43-06 and *S v Madzivanyika* HB 85-06. A sentence of the kind imposed here may easily bring the criminal justice system into disrepute. In the words of Lawton LJ, in *R v Sargeant* (1974) 60 CR App Rep 74 (CA) at page 77;

“The old testament concept of an eye for an eye and tooth for tooth no longer plays any part in our criminal law. There is, however, another aspect of retribution which is frequently overlooked. It is that of society, through the courts must show its abhorrence of particular types of crimes, and the only way in which the courts can show this is by the sentence they pass. The courts do not have to reflect public opinion. On the other hand the courts must not disregard it. Perhaps the main duty of the courts is to lead public opinion”.

I agree. In the circumstances I consider that prison sentence in the region of 24-30 months with part thereof suspended was called for.

The sentence, therefore is not in accordance with real and substantial justice and I, accordingly, withhold my certificate.