

THE STATE

Versus

KUREYA ALEXANDER TSODZO

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 7 DECEMBER 2006

Criminal Review

NDOU J: The accused was properly convicted by a Bulawayo Magistrate of theft of property belonging to his employer i.e the Civil Aviation Authority, at J M Nkomo Airport. The property was valued at \$24 000 000 (old value). He was sentenced to a fine of \$4 000 000 or 4 months imprisonment. In addition he was sentenced to 6 months imprisonment all of which was suspended on the usual conditions of good future behaviour. The facts of the case reveal that although the stolen property was recovered, it was not as a result of a change of heart by the accused, but are a result of police effort. The accused had, in fact, sold stolen property for \$9 000 000 and had already been paid \$4 000 000 by the receiver of the stolen property.

The accused stole public property a fact which aggravates his conduct. By stealing from his employer, he abused the trust the employer had on him.

Generally, it is wrong to fine an offender an amount which is lesser than the money stolen – *S v Urayayi* HB-54-84; *S v Dhokwani* HH-2-82; *S v Matika* HB-17-06 and *S v Pasi* HB-127-06. There are, of course, exceptions to this rule. The facts of this case do not reveal such an exception. Trial magistrates should always strive to strike a right balance in sentencing the accused – *S v Sparks & Anor* 1972 (3) SA 396

and *S v Mpofo* HB-89-03. It should be borne in mind that a sentence that is too light is as wrong as one that is too heavy, both can bring the criminal justice system into disrepute – *S v Holder* 1979 (2) SA 70; *Graham v Odendaal* 1972 (2) SA 611 (A); *S v Van der Westhuizen* 1974 (4) SA 61 (C) and *S v Matika supra*. The sentence imposed by the trial magistrate has the unfortunate effect of trivialising a very serious theft of public property.

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