

**THE STATE**

**Versus**

**MAGRET CHIRIGE**

IN THE HIGH COURT OF ZIMBABWE  
NDOU J  
BULAWAYO 18 SEPTEMBER 2006

Criminal Review

**NDOU J:** The accused was aged 33 at the time of the offence. She is a female first offender. She was convicted by a Gweru Provincial Magistrate of theft of a table cloth, 20 kilograms of meat, 2 kilograms of sugar, 2 bars of soap and a black jersey, the property of her employer at the time. She was employed by the complainant as a domestic worker of the type commonly referred to as maid. She pleaded guilty to the charge and nothing turns on the conviction. The total value stolen was put at \$258 200 000 and \$250 000 000,00 worth of property was recovered. When I carefully analysed the above-mentioned stolen items I found the value unusual for the kind of domestic items stolen. I queried, in particular, the value of the table cloth of \$250 000 000,00. Even though it was said to be of Irish origin, I felt that the value was unusually high. The learned trial magistrate responded as follows:

“I was also surprised to see a table cloth being valued at such a price when I was reading the state papers. I then asked the prosecutor about it and he also said he had done the same to [sic] the complainant who in turn insisted that it was valued \$250 000,00. I was left with no choice but to accept that value since it was the complainant’s word which is to be believed ...” (emphasis added)

Because of the value of the table cloth in particular, the accused was sentenced to 40 months imprisonment, of which 10 months was suspended on conditions of

good behaviour. She is currently serving an effective sentence of 30 months imprisonment. It is trite that, on the question of the value of the stolen property, the court should carefully examine the nature of the items and their stated value. The court should also use its general knowledge of the items – *S v Damutoni & Anor* HH-106-02 and *S v Mpofo* HB-89-03. When determining an appropriate sentence, the trial court should exercise its discretion judicially in determining the magnitude or quantitative significance of the crime. The court cannot simply accept the say-so of the victim of the crime on the value of stolen property damage or prejudice. *In casu*, the fact that the table cloth is valued at \$250 000,000,00 is largely fortuitous. There is no evidence that, on account of her employment as a maid, she must have known that it carried such a value – *S v Whitehead* 1971(4) SA 613 (A). It is clear that the trial magistrate over-emphasised the value of the stolen property and imposed a long term of imprisonment. The value of the article is not the all important element. The words of BEADLE CJ, in *R v David and Alfred* 1964 RLR 2 at 5 B-C, are instructive. The learned Chief Justice said:

“The value of the article stolen is one of the features to be taken into account in assessing the moral blameworthiness of the accused, but it should not itself be carried too far, and there is no question of a mathematical relationship between the value of the article stolen and the punishment imposed. A broad assessment of the relationship between the value of the article stolen is all that is required.”

And at 5-G the learned Chief Justice went on to state:

“... and I must emphasise that it is only in assessing moral blameworthiness that the value of the article stolen must be taken into account. There may be cases where the value of the thing stolen is irrelevant where, for example, the accused does not know the value of the thin stolen, or intends to steal all he can get.”

And at 6B-D the learned Judge further observed:

“It may be of assistance to magistrates if I indicate some of the factors which I think might be taken into account in assessing moral blameworthiness:

1. The value of the thing stolen, so far as the accused himself is aware of this value.
2. The possibility of the accused’s yielding to a sudden temptation.
3. The degree of premeditation or planning which preceded the crime. For example, if the accused was found in possession of some special apparatus, such as bag with a false bottom prepared specially for the purpose of ...

I stress, however, that the above factors are the ones to be taken into account only for assessing moral blameworthiness. In assessing punishment generally, however, there are often many other factors to be taken into account as well, though moral blameworthiness is often one of the most important.”

In *S v Damutoni & Anor*, *supra* at page 2 of the cyclostyled judgment SMITH J said-

“In my view, similar considerations apply [as in quantum of maintenance] as per McNALLY JA in *Muzondo v Muzondo* 1985 (2) ZLR 240 (S) at 245D] in relation to cases of theft where the value of the stolen property is mentioned. Clearly, in the vast majority of cases, it would be the complainant who had estimated the value of the property that was stolen from him or her. Some complainants would be reasonably realistic, whilst others may not be realistic. It is for the magistrate to decide whether or not he considers the valuation to be realistic, having regard to the description of the property that was stolen. He has a working knowledge of the value of ordinary common or garden or household articles. He must not blindly accept that the value stated in the outline of the state case is correct. He must give careful consideration to the nature of the articles that were stolen and to the value stated, and then decide whether or not it is reasonable and acceptable.” (Emphasis added)

In this case, the trial magistrate did exactly the opposite of the said principles and blindly accepted the say-so of the complainant. She went on to consider the value of the table cloth of Irish origin as the all-important element. This is a misdirection. On account of this misdirection she sentenced a 33 year of female first offender to a long term of imprisonment for what in reality is theft of five items of household

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nature. The table cloth was recovered, albeit, largely due to the prompt and effective action taken by the police, rather than a change of heart by the accused. She lost her employment of one and half years. A correct balance must be struck between the aggravating and mitigatory factors f the case.

Accordingly, the conviction is confirmed but the sentence is set aside and the following substituted:

“18 months imprisonment of which 10 months are suspended for 5 years on condition the accused does not, within that period, commit any offence involving dishonesty for which she is sentenced to imprisonment without the option of a fine.”

If the accused is entitled to her immediate release as she has served the effective sentence.

Cheda J ..... I agree