

**THE STATE**

**Versus**

**KWANELE NCUBE**

IN THE HIGH COURT OF ZIMBABWE  
NDOU J  
BULAWAYO 21 JUNE 2007

Criminal Review

**NDOU J:** The accused person, aged 34, was properly convicted by a Gweru Provincial Magistrate of robbery. In my view, nothing turns on the conviction. The accused was sentenced to a fine of \$50 000 or in default of payment 3 months imprisonment, plus an additional 3 months wholly suspended on conditions of good future behaviour. The facts relevant to the issue of sentence are the following. The accused and his accomplice were at Sparrow Business Centre. The complainant was also at the same centre drinking beer. The accused and his accomplice went to where the complainant was. He, in typical African way, shared his beer with them. The complainant later left the business centre leaving the accused and his accomplice behind. After the complainant's departure the accused and his accomplice decided to follow him in order to rob him. They caught up with the complainant. They demanded money and property from the complainant. They threatened to assault him if he did not comply with their criminal demands. As a result of the threats, the complainant gave them \$8 million, a bicycle pump and one chicken. The total value of the stolen property is \$9,5 million. The stolen property was not recovered. The accused is a first offender. His wife died of an AIDS related disease. He is HIV positive. He has two children to look after.

Judgment No. HB 67/07

Case No. HC 1894/07

CRB No. 516/07

To impose a paltry fine of \$50 000 for such a serious criminal behaviour would trivialise a serious robbery. The accused's moral blameworthiness is very high. From her scant reasons for sentence it is not clear why such a manifestly lenient sentence was imposed. This seems to be a case of misplaced sympathy as the accused is HIV positive. This type of robbery is prevalent in urban areas. For robbery, imprisonment is normally justified even for first offenders. Even where small amounts are stolen without violence a custodial sentence is called for – *Zuze v S* GS 261-81; *S v Nyathi* HH-405-83 and *S v Ndlovu and Anor* HB-12-05. The long and short of it is that robbery is a most serious offence. In *S v Mvute*; *S v Baby* 1985(2) SA 61 (CK) at 62 it was said:

“The offence consists of the two elements of violence and dishonesty. Normally an individual can avoid situations which lead to violence and the danger of being assaulted by taking the necessary precautionary measures. Similarly, he can take steps to guard against his property being stolen. It is, however, a different matter when it comes to robbery. The victim cannot take precautions against robbery. In his day-to-day living he visits friends, goes to work and goes shopping. This is usually when robbers strike. Robbers often roam the townships in gangs, attacking innocent people, depriving them of their property and almost invariably injuring the victims, sometimes seriously. The persons robbed are more often than not women or elderly people who cannot defend themselves. It must also be remembered that robbery is always a deliberately planned crime” – see also *South African Criminal Law and Procedure* Volume II – P M A Hunt and J R C Milton at 660.

In the light of the foregoing a custodial sentence in the region of 3 years with part thereof suspended on appropriate conditions was called for.

Accordingly, I decline to certify these proceedings as being in accordance with true and substantial justice. I withhold my certificate.