

**THE STATE**

**Versus**

**ORSTERN MUSANA**

IN THE HIGH COURT OF ZIMBABWE  
NDOU J  
BULAWAYO 5 JULY 2007

Criminal Review

**NDOU J:** The accused, aged 21, was properly convicted of assault with intent to do grievous bodily harm by a Shurugwi Magistrate and nothing turns on the conviction. He was sentenced to a fine of \$400 000,00 (old currency) or in default of payment 3 months imprisonment plus an additional 6 months imprisonment wholly suspended for 5 years on the usual conditions of good future behaviour.

The facts of this case reveal a very serious and unprovoked assault. In brief, the accused blamed the complainant for the ill-health of his (accused's) wife. He accused the complainant of bewitching his wife. The complainant denied bewitching the accused's wife. That denial annoyed the accused. The accused picked up a stone and struck the complainant once on the face. The complainant fell to the ground as a result of the blow. Thereafter, the accused drew a knife from his pocket and stabbed the complainant once on the left side of his back. The doctor who examined the complainant opined that the degree of force used by the accused was severe and that the resultant injuries were very serious.

I am satisfied that the sentence imposed here is unusually lenient. In *S v Ndlovu* HH-197-87 for stabbing an ex-girlfriend in the stomach with severe force causing serious injury an effective sentence of 6 months imprisonment was considered appropriate. In *S v Murombo* HH-224-87 for stabbing two blows to the shoulder with moderate force, 8 months imprisonment with half suspended was

considered appropriate. In *S v Razawu* HH-257-87 for stabbing his wife twice in the face and side but not seriously, 8 months with half suspended was considered appropriate – see also *Mukundu v State* AD 31-80; *S v Nota* GS 196-81; *S v Dube* GB 60-79. The magistrate was supposed to be guided by the principle of consistence. She should have had regard to sentences imposed in similar cases – *Gerber v S* [2006] 4 ALL SA 423 (SCA).

This is one of those cases where the learned trial magistrate did not apply her mind to the injuries as evinced by the medical report, the nature of the weapon used and the part of the body where the blows were aimed or landed. Magistrates should take medical reports seriously and also consider the exhibits carefully in order to determine the nature of injury inflicted by the accused person. These factors are

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relevant in determining the accused's moral blameworthiness. This was not the case here.

Accordingly, I am satisfied that the sentence is not in accordance with true and substantial justice and I withhold my certificate.