

**THE STATE**

**Versus**

**KNOWLEDGE NDLOVU**

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

Criminal Review

**NDOU J:** The accused, aged 25, was properly convicted by a Gwanda Magistrate of assault as defined by section 89 of the Criminal Law (Codification and Reform) Act [Chapter 9:23] and nothing turns on the conviction. He was sentenced to a fine of \$4 000,00 (old currency) or in default of payment 45 days imprisonment. I am concerned about the propriety of the sentence imposed. The relevant facts are that the accused and the complainant are ex-lovers. Like any other ambitious lovers, they had wanted their relationship to lead to matrimony. Unfortunately, this did not happen as the complainant decided to terminate the relationship. This termination led to the assault subject matter of this case as the accused was not amused by the termination of the relationship. He approached her at her place of employment at Thokozani Store, Makwe. This, in my humble view, is an unprovoked assault. She no longer loved him, so the accused had to accept that painful decision. One of the consequences of falling in love is that the other party may cease to love, and the affected lover has to accept that decision. He may be hurt by the decision but he is certainly not provoked. The accused drew a knife and stabbed the complainant once on the forehead and once on the palm. This was a way of punishment and not to win back her heart. The complainant sustained a deep laceration on the forehead and another laceration on the palm. The doctor who examined the complainant opined

that moderate force was used. In *Ndlovu v S* S-196-81 It was held that for assault resulting in serious injury committed without provocation imprisonment is justified even for first offenders – see also *S v Rosary* HH-133-83; *S v Razawu* HH-257-87 and *S v Ndlovu* HH-197-87. In the latter case the accused stabbed an ex-girlfriend in the stomach with severe force causing serious injury and an effective prison sentence of 6 months was considered appropriate – see also *S v Ncube* HB-19-86 and *S v Horwe* HH-311-86.

Accordingly, I hold the view that the sentence imposed here is not in accordance with true and substantial justice and I withhold my certificate.