EMMANUEL MURAMBIWA

VERSUS

THE STATE

IN THE HIGH COURT OF ZIMBABWE
CHEDA AND MATHONSI JJ
BULAWAYO 12 JULY 2010 AND 30 SEPTEMBER 2010

Mr. R. Ndlovu for appellant
Mr. K. Ndlovu for respondent

Appeal against sentence

CHEDA J: This is an appeal against sentence only.

Appellant was charged with two counts of contravening section 131(2) of the Criminal Law (Codification and Reform) Act [Chapter 9:23], which is commonly referred to as "housebreaking and theft."

He was jointly charged with one Albert Dzingai. He pleaded guilty to the charge, was convicted and sentenced as follows:

> "Count 1 – 7 years imprisonment
> Count 2 – 8 years imprisonment
> Total 15 years imprisonment 3 years imprisonment is suspended for 5 years on condition each accused does not within that period commit any offence involving unlawful entry or dishonesty and for which he is sentenced to imprisonment without the option of a fine ."

The facts which are common cause are that between January and February 2009 the accused together with his accomplice broke into Major Meats Butchery, Bulawayo and stole meat the value of which totals R31 700-00 of which R17430 was recovered.

Of the total of 15 years imprisonment 3 years imprisonment was suspended on condition of good behaviour. He now appeals against sentence only. Appellant's contention is that the 8 years imprisonment imposed on the second count should have been ordered to run concurrently with the 7 years imprisonment imposed in count one.

Respondent made a concession in this matter.

It is now an established principle in our law that

(1) where a person is convicted of multiple counts, the court should either take all counts as one for the purposes of sentence, or

(2) impose an appropriate sentence for each count.

The rationale of this approach is that courts should come up with sentences which should be fair and just to both the offender and the offended. Courts should guard against the common error of imposing sentences which are so excessive to an extent of leaving an accused with nothing to look forward to upon release. The courts should at all times bear in mind that whatever sentence it imposes on an accused, should at least leave him with some residue of dignity as opposed to relegating him to self-pity, see *S v Sifuya* 2002 (2) 437(H). Courts are, therefore, encouraged to allow sentences to run concurrently where there is a need to do so, see *S v Chirwa* HH 79/94. To buttress this reasoning which is aimed at bringing in some normalcy in sentencing, our courts now distinguish sentences for crimes of a violent nature from those involving non-violence, see *S v Nyahuna and another* HH 135/03.

It is for the above reasons that I am of the view that the sentence imposed indeed induces a sense of shock especially if it is taken in totality and as such invites intervention on the basis of a misdirection by the court a quo.

The following order is therefore made:

(1) The sentence imposed by the court a quo on the 17th March 2009 be and is hereby set aside and is substituted by the following;

(2) Each accused is sentenced to:

Count 1: 7 years imprisonment of which 1 year imprisonment is suspended for 5 years on condition accused does not commit any offence which involves unlawful entry and/or dishonesty for which upon conviction he is sentenced to imprisonment without the option of a fine.

Count 2: 6 years imprisonment. The sentence in count 2 shall run concurrently with the sentence in count 1.

Effective: 6 years imprisonment.

Mathonsi J agrees.....

R. Ndlovu and Company, appellant's legal practitioners
Criminal Division, Attorney General's Office, respondent's legal practitioners