

**THE STATE**

**VERSUS**

**(1) DOUGLAS ZULU**

**(2) BISMARCK MAPOSA**

IN THE HIGH COURT OF ZIMBABWE  
CHEDA J  
BULAWAYO 15 JULY 2010

Review Judgment

**CHEDA J:** This is a review matter.

The two accused persons were jointly charged with two counts of fraud. The allegations are that on the 22<sup>nd</sup> November 2009 and 18<sup>th</sup> January 2010 accused 2 acting with the concurrence of accused 1, completed a withdrawal slip purporting that it had been authored by the complainant, Robinson and company trading as Makro, Bulawayo. He then approached accused 1 a Bank teller. In so doing they succeeded in defrauding the complainant in the sum of \$3740-00. Upon discovery they re-instated the said money by executing an internal transfer into the complainant's account.

They pleaded guilty and were sentenced as follows:

“Both counts treated as one for the purposes of sentence each \$200 fine or 30 days imprisonment. In addition 6 months imprisonment which is wholly suspended for 3 years on condition that the accused persons do not commit any offence involving dishonesty within that period for upon conviction will be sentenced to imprisonment without the option of a fine.”

This sentence is clearly lenient. Despite the fact that they are first offenders, this offence required careful planning and execution.

It appears to me that the notion that the court should take into account the fact that one is a first offender is not properly understood. This principle is a very noble one, but, however, it now seems that it is now being abused as it now results in ridiculous sentences which are clearly unjust.

Generally theft which involves such large sums of money, deserve to be dealt with in a manner that ushers in some measure of deterrence. Even, if, there has been restitution, this is a case which deserved an effective term in prison term even if it was short. A sentence of at least 2 years imprisonment effective would have met the justice of this case.

In light of the above, I can not confirm these proceedings as being in accordance with real and substantial justice.

Cheda J.....