

THE STATE

Versus

EMMANUEL SHOKO

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 25 AUGUST 2010

Criminal Review

KAMOCHA J: The accused was charged with contravening section 3(1) of the Gold Trade Act, [Chapter 21:03] in that on 19 May 2010 he was found in possession of 0.62 grams of gold valued at \$20,62. He was arrested and appeared in the magistrate court in Shurugwi where he pleaded guilty and was found guilty as pleaded. The conviction appears to be proper and nothing turns on it.

The sentence, however, is a cause for concern. Section 3(3)(a) of the Act provides that any person convicted of contravening section 3(1) shall be liable to imprisonment for a period of not less than five years or more than ten years unless the court finds special circumstances why the mandatory sentence should not be imposed.

When the accused was invited to advance any special circumstances if he had any, he told the court that his wife was in hospital and was going to undergo a surgical operation. He claimed that he committed the offence because he wanted to raise hospital fees and money for the surgical operation.

The court accepted the accused's story and considered it to amount to special circumstances. In its consideration the court reasoned that the accused needed money urgently to save his wife's life. There was need to save life. The court went on to state that the circumstances that the accused found himself in, were beyond his control as he needed to act fast to save life.

These are not the special circumstances envisaged by the Act. What the accused told the court happens quite often. It does not mean that when one is in such a situation he has to resort to crime. The accused sought a wrong and illegal solution to his problem which turned out to be no remedy at all as his gold was valued at only \$20. That could not pay hospital fees and a surgeon's fees. He, therefore, put his wife into more pain and danger. He was irresponsible by resorting to crime. His behavior does not amount to special circumstances.

Judgment No. HB 95/10
Case No. HC 1702/10
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There is, in the result, no reason why the mandatory sentence should not have been imposed as required by law.

The trial court had sentenced him to undergo 24 months imprisonment of which 18 months was suspended for 5 years on the customary conditions of future good behavior. The remaining 6 months was suspended on condition that he performed community service. That sentence cannot be allowed to stand and must be set aside.

In the result, it is hereby ordered that the sentence imposed by the trial court be and is hereby set aside. The matter is remitted to the trial court for it to recall the accused to appear before it in order to impose the mandatory sentence as required by the law.

In doing so the court should take into account the 6 months imprisonment which he served as community service.

Ndou J I agree