

THE STATE

Versus

INNOCENT NGWENYA

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

Criminal Review

KAMOCHA J: The accused's criminal career started in 2004 when he was just 17 years. He was convicted of theft of stock on 9 February 2004 and was sentenced to undergo 36 months imprisonment of which 12 months imprisonment was suspended for a period of five years on the customary conditions of future good behaviour.

On 17 January 2007 he was convicted of unlawful entry into premises and theft for which he was sentenced to undergo 14 months imprisonment of which 4 months imprisonment was suspended for five years on the usual conditions of future good behavior. The 12 months imprisonment suspended on 19 February 2004 which had failed to achieve the desired effect was further suspended on the same conditions.

On 15 November 2009 he unlawfully entered into premises and stole property valued at \$100 therefrom. Two days later on 17 November 2009 he proceeded to another village and unlawfully entered premises and stole property valued at \$303 therefrom.

He was arrested and appeared in court at Binga facing two counts of unlawful entry into premises and theft. He tendered pleas of guilty and was found guilty as charged.

In its reasons for sentence the court observed that the accused was now 23 years, he is married with three children, he pleaded guilty to both counts and was contrite. For reasons only known to the court, it recorded that he was a first offender. This can only be attributed to lack of concentration on the part of the judicial officer.

The aggravating factors found by the court were that the offence was serious. It was prevalent and on the increase in Binga. The accused carefully planned and premeditated the commission of the two counts and was an unrepentant criminal who had no respect for other people's property. He was a menace to society and deserved to be removed therefrom by being incarcerated. The court correctly held the view that the aggravating features outweighed the mitigating ones.

The court treated both counts as one for the purpose of sentence and sentenced the accused to 5 years imprisonment of which two years imprisonment was suspended for 5 years on the customary conditions of future good behavior. In addition the suspended sentence of 12 months imprisonment suspended on 17 February 2007 was brought into effect.

The court correctly, in my view, held that the accused was an unrepentant criminal who no longer deserved to be treated leniently. There was, therefore, no need to suspended part of the sentence imposed. The purpose of a suspended sentence is to deter an offender from behaving in a similar manner in future while the suspended sentence is in force. To some extent the purpose of a suspended sentence reforms an offender. However, where an offender repeatedly breaches the conditions of suspended sentences then no useful purpose would be served by repeatedly availing him or her the benefit of a suspended sentence.

In casu, the accused first got the benefit of the suspended sentence on 9 February 2004. It did not deter him as he committed another offence of which dishonesty was an element during the period of suspension. The suspension period was 5 years but he committed the offence within 2 years.

On conviction on 17 February 2007 he was sentenced to 14 months imprisonment of which 4 months imprisonment was suspended and the suspended 12 months was further suspended for a further period of 5 years. There was no need to suspend part of the sentence imposed in the light of the fact that the court had decided to further suspend the 12 months imprisonment previously suspended.

For the second time the accused breached the condition of suspension when he committed two similar offences within two years. He was expected to keep a clean slate for at least 5 years. The suspended sentence has clearly failed to achieve the desired effect in this particular matter. Suspending part of the accused's sentence will serve no useful purpose and is therefore meaningless.

Despite the above short comings in the proceedings I would issue my certificate since out of a total property value of \$403 property valued at only \$30 was not recovered.