

THE STATE

VERSUS

MABUTHO LEARNMORE

AND

MGUQUKO CHARLES

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 6 OCTOBER 2011

Review Judgment

CHEDA J: This matter was forwarded to me on review as per the usual procedure.

On the 20th January 2011 the two accused locked a consignment of copper cables into a bus destined for South Africa. At the Beitbridge border post they were arrested after the bus was searched by police who found the said copper weighing 1621.6 kgs which they had not declared.

They were arraigned before the courts, they pleaded guilty, convicted and sentenced to pay a fine of \$500-00 each and the copper was forfeited by the state.

Upon perusal of the record, I noticed that the learned trial magistrate sentenced them without ascertaining the value of the copper.

I queried this, as I was of the view that it was improper. The learned trial magistrate in his response agrees that it was essential for him to know the value before passing sentence.

Sentencing is the last step in meting justice on an accused. It is, therefore, necessary that such sentence should be just to both the state and the accused. That justice can only be attained if the court passes it after taking into consideration all the important factors which guide him in that determination.

A sentence where the value of the subject matter is unknown either as actual or potential prejudice is invalid as it would not have been properly assessed.

What it means is that the ends of justice would have been defeated. As such these proceedings are not in accordance with real and substantial justice.

In light of the serious miscarriage of justice in this matter, the following order is made:

IT IS ORDERED THAT:

- (1) the conviction is confirmed.
- (2) the sentence is set aside
- (3) the matter is referred back to the same magistrate to deal with the question of sentence in terms of the act after ascertaining the value of the copper.

Kamocha J agrees.....