

THE STATE

VERSUS

WATMORE CHARUMA

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
23 NOVEMBER 2011

Review Judgment

CHEDA J: This is a review case referred to me by the learned Regional Magistrate in the exercise of his power for scrutiny.

The accused was charged with contravening section 131 of the Criminal Law (Codification and Reform) Act, 2004 which is (unlawful entry into premises) which is formerly “housebreaking”.

This crime has now been simplified as it eliminates the requirements regarding the nature of the premises broken into and the manner of entry. The use of the term unlawful entry into premises broadens the crime as its objective is to protect people’s privacy against invasion.

The crime is committed where entry is made without permission or authority by the lawful occupier. Section 131 (2) deals with aggravating circumstances for example:

- (a) when the accused entered a dwelling house,
- (b) knew that there were people inside the premises,
- (c) used violence against any person, or damaged or destroyed any property in effecting the entry, and
- (d) whether the accused committed or intended to commit some other crime.

In *casu* accused was charged with contravening section 131 of the Code, but, the court dealt with the matter as if accused was being charged with the common law crime of housebreaking. This should not have been the position. That crime has since been replaced by section 131 of the Code.

This, therefore, means that the conviction was improper. The accused should have been charged with unlawful entry as one count and theft as the other. The courts, are, therefore, urged to bear in mind the provisions of section 131 (2) with regards to sentence. The following order is made:

- (1) The conviction and sentence are set aside.
- (2) The matter is referred back to the same court for a trial *de novo* before the same magistrate. In the event of a conviction the court should not impose a sentence which is in excess of that which it imposed on the 5th September 2011.

Cheda J.....

Ndou J.....I agree