

THE STATE

Versus

JOYCE MUGOTA

And

MIKE MARINGE

IN THE HIGH COURT OF ZIMBABWE
MATHONSI J
BULAWAYO 24 NOVEMBER 2011

Review Judgment

MATHONSI J: The 2 accused persons appeared before the Magistrates' Court in Zvishavane facing one count of contravening section 10 of the Copper Control Act [Chapter 14:06] the allegations being that they both unlawfully possessed 250 kilograms of copper cables.

They both pleaded guilty and were duly convicted and each sentenced to 10 years imprisonment of which 2 years imprisonment was suspended for 5 years on condition of future good behavior.

The facts are that on the day in question the 2 loaded 5 packed cardboard boxes and 4 packed sacks of copper conductors into a taxi from Madiro compound in Zvishavane and headed for Mhandamabwe. Acting on a tip off the police intercepted them at Zvishavane Town Centre and directed the taxi to the police station where the booty was uncovered.

The accused could not give a satisfactory account of their possession of the copper cables leading to their arrest. It turned out that the cables had been stolen from the ZESA power line underground cables which supply power to Shabani Mine. The value of the copper cables was not given and the trial court did not inquire into it.

In mitigation the first accused stated as follows:

"I am 54 years old. I am not married, I am a divorcee. I have got 5 children. My eldest child is 34 years, my youngest child is 11 years old. I was surviving on buying and selling clothing. I have got \$200 at home. I have got 2 beasts. I had been asked to look for a buyer by the owner of the cables and I was arrested. The owner was Munyaradzi Gava.

May the court be lenient with me. I look after my 2 grand children. I am diabetic. I am prepared to do community service or to pay a fine.”

The second accused stated the following in mitigation:

“I am 31 years old. I am not married, have one child aged 10 years. The mother stays with the child. I stay in Chivi area. Accused 1 is my grandmother. I was surviving on Accused 1 stays in Harare. I have got no money in savings. I have got no assets of value. I was assisting my grandmother. May the court be lenient with me. I would prefer community service or an option to pay a fine.”

Nothing turns on the conviction of the accused persons which was proper. It is the sentence imposed which presents some difficulty. In assessing an appropriate sentence, the trial court reasoned as follows:

“The accused persons’ conduct was unlawful and deserves punishment. The accused persons teamed up to commit an offence. The unlawful possession of copper cables is a very serious offence which calls for a deterrent sentence. The accused persons wanted to assist a colleague to look for a buyer. No one knows where the copper cables had been taken from and there is a possibility that they had been stolen from ZESA lines. There is need for the court to pass a deterrent sentence that would also go a long way in discouraging theft of copper cables from ZESA lines. The accused persons had in their possession a substantial quantity of copper cables.

Imprisonment is the most appropriate sentence and the recovered copper will be forfeited to the state.”

In my view the trial magistrate did not apply his mind fully to the facts before him. According to the facts placed before him, the copper cables had been stolen from the ZESA power line supplying Shabani Mine. They clearly belong to ZESA and having been recovered, they should have been returned to ZESA instead of having them forfeited to the state. The order of forfeiture was therefore inappropriate and cannot be allowed to stand.

More importantly, the sentence imposed also cannot be supported at all. Section 10 of the Copper Control Act [Chapter 14:06], under which the accused persons were convicted, provides:

“A person who is found in possession of copper in regard to which there is a reasonable suspicion that it has been stolen and is unable to give a satisfactory account of such possession shall be guilty of an offence and liable to a fine not exceeding level eight or

to imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment.”

It is therefore not easy to comprehend how the trial court came up with a sentence of 10 years imprisonment when the penal section provided, first and foremost, for a level 8 fine or 2 years imprisonment. A level eight fine is only \$500,00.

The trial court therefore fell into grave error by coming up with the sentence that it imposed which was way in excess of that provided for in the Act. The sentence cannot stand and has to be set aside.

In the result I make the following order, that-

1. The conviction of the 2 accused persons is confirmed.
2. The sentence is set aside.
3. The order for forfeiture of the copper cables is set aside.
4. The matter is remitted to the trial court for assessment of an appropriate sentence in accordance with the provisions of section 10 of the Copper Control Act [Chapter 14:06].

Ndou J I agree