

STATE

AND

JAMES DZAPASI

AND

GERALD KAHARI

BACHI-MZAWAZI J

Chinhoyi, 06 June 2023

Criminal Review judgment

BACHI-MZAWAZI J: The accused was persons pleaded guilty to two counts of unlawful entry in violation of Section 131 (2) (e) of the Criminal Law Code.

It is alleged that on two separate occasions and places they unlawfully gained entrance into the residence of the two complainants and got away with an assortment of goods which include electrical gadgets. On one of the instances one of the accused dropped a cellphone which was in his possession which eventually led to their arrest. All the goods stolen from the two premises were recovered.

In sentencing the trial court took into account that the two had individually a single related conviction with suspended imprisonment terms. However, he frowned at the fact that these two had just been recently released from prison on Presidential pardon.

He thus sentences them to an effective 4 years imprisonment for both counts and also brought into effect the suspended sentences.

In essence accused one is serving 4 years plus 6 months suspended, and 4 years 3 months for the second accused.

In as much as this court appreciates the repugnance by the trial court, the facts of this matter should have been treated alone and did not warrant such a long prison term. All the property was recovered. The accused persons did not benefit from the offence.

A holistic approach to the Presidential Amnesty is also to view it from the angle of the inmates. One becomes a serial misfit once incarcerated. He is alienated from family and friends. Prospects of employment and how to fend for themselves or shelter are nil. This programme was impromptu. It was without mental preparation and notice to the jail birds who find themselves

going out to nowhere. There was or is need for reintegration programs for both society and the prisoners. The trial court also completely disregarded the enquiry on suitability of community service. Ironically, both accused were sentenced to jail when they committed their very first offences. These are the same offences which had the suspended prison terms hanging over their heads.

From this stand point the sentence was duly harsh. It defeats the whole rationale of Presidential Pardons, to decongest the archaic over populated holding facilities in this country.

Courts should apply their mind to personal circumstances of the accused before them as counter balanced by the interests of justice and society. See *State-v-Shariwa 2003 (1) ZLR 314 HH*.

In that regard, the sentence is not in accordance with real and substantial justice.

The four year sentence is set aside and substituted with 12 months each for both counts in addition the respective suspended sentences to be brought into effect. Accused one 12 months plus the 6 suspended months, total of 18 months. The second accused person 12 months plus the suspended 3 months, total 15 months.

Honourable Mrs. Justice Bachi-Mzawazi

Honourable Mrs. Justice Muzofa – I Agree