

WILSON MUCHADAKUENDA
versus
THE STATE

HIGH COURT OF ZIMBABWE
SMITH and CHINHENGO JJ
HARARE 19 March 2002

Criminal Appeal

Mr *E. Chivinge*, for the appellant
Mr *M. Nemadire*, for the defendant

CHINHENGO J: The appellant was convicted on charges of contempt of court and common assault. He was sentenced to three months imprisonment on the first charge and to two months imprisonment on the second charge. He appealed against conviction and sentence.

The accused is 26 years old. He is a member of the Zimbabwe Republic Police with one year and eight months of service. The following facts were not challenged by him at his trial. His cross-examination of the State witnesses was cursory and it addressed peripheral issues. The facts which I relate must therefore be viewed as undisputed.

The appellant was properly summoned to appear before the Customary Law Court at Concession on 23 January 2001. When the proceedings, which involved a dispute with his wife, commenced the appellant was in default. The magistrate proceeded to inquire into the matter in the appellant's absence but with his wife in attendance. Later on during the proceedings the appellant entered the courtroom. I cannot describe what then transpired more clearly than what the magistrate said at the trial:

“When the case was called on the roll the accused person who was the respondent was in default. There was a return of service from the police which showed that the accused

person had been served and he had refused to sign. ... and as such I had to go ahead and make the inquiry in his absence. When I was making the inquiry and whilst in the midst, the accused burst into the

court room and his entrance into the court is one I can describe as violent and disrespectful. He had both his hands in his pockets and when he got into court he advanced towards me and he got to a distance of about 50 cm from me. So when he got to me he asked me and overlooking my head he said "Why are you trying my wife in my absence?" I asked him to calm down but he did not take heed, he went on to tell me that I was a fucking idiot who was good for nothing and I had no powers to try him as he was a member of the presidential escort. I then asked the woman police officer who was the orderly to arrest the accused and when she attempted to do that accused advanced towards me and apparently he had an empty beer bottle in his pocket. He swore and indicated that he was going to bash my head and the police officer went ahead and tried to arrest the accused but she was overpowered and assaulted and her handcuffs were thrown away and accused left the court room running and the police officer followed running shouting for help. The accused was apprehended by the guard who mans the D.A's Complex gate. All this time the accused was ranting and panting at me and this drew a large number of people including some litigants and others whose cases I had presided over. I cannot comment whether the accused person was drunk or not but he behaved like someone possessed by an evil spirit. There is not a bit of truth in the assertion that accused person apologised because he had to be arrested by members of the Support Unit branch with whom he had exchanged blows. Accused later was charged and he became violent and he had to be suppressed by members of the prison officers (service). So it's a total lie that he apologised to me. I witnessed the assault on the police officer. She was assaulted right in front of me when we were in the court room and the court was in session. When the police officer tried to handcuff the accused, the accused shoved her hands away and elbowed her between the chin and the neck. The accused went on to assault the police officer but I can't describe how because it was in a fumbled up manner. The accused also pushed her away as he wanted to run away. That's all."

The above is the graphic description of the manner in which the appellant committed the two offences. Further evidence, similar in substance to the above, was given by Shylet Mutengambiri, the police officer who was acting as a court orderly and who it was alleged was assaulted by the appellant. On appeal the appellant baldly disputed that he had been contemptuous of the court or that he had assaulted the complainant in the second charge. As I have already mentioned, the appellant failed to cross-examine the State witnesses in any manner that would have discredited their evidence. There is no basis whatsoever on which the appellant's conviction can be challenged. The appeal against conviction on both charges is therefore dismissed.

In his notice of appeal against sentence the appellant contended that he should have been sentenced to two weeks imprisonment in respect of the charge of contempt of court and to a fine in respect of the charge of common assault.

The principles which a court must follow in sentencing a person for contempt of court were laid down in *S v Benatar* 1984 (3) ZLR 584, *S v Musa* 1997 (2) ZLR 149 (H) and several other cases. At 156B in *Musa's* case I stated that the power to commit for contempt should not be used for the vindication of a judicial officer as a person or (at 157B) for purposes of retribution. That power must be used to maintain, and where it has been eroded, to restore the esteem of the court. It must always be remembered that contempt of court is a serious offence which brings the administration of justice into disrepute or contempt. The courts have to guard very jealously their dignity and they must impose such punishment as is appropriate to vindicate their honour. In punishing the contemtor, the extent of the punishment must remain in the background whilst the court's esteem and authority must be in the forefront (see *S v Nel* 1991 (1) SA 730 (A) at 752I - 753E (of the translation)). I have kept the above principles in mind in assessing the appropriate punishment in this case. I have to consider that the appellant in this case is not an ordinary member of the public. He is a police officer, who no doubt appreciates the importance of the court institution in our society. It is the only institution for the peaceful resolution of conflicts in society and without it the law of the jungle would prevail. The appellant entered a courtroom when the court was in session. He rudely advanced and approached the judicial officer and abused him. His behaviour was most contumacious and simply unacceptable from a police officer. He was armed with an empty beer bottle and threatened to attack the presiding judicial officer with it.

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Such behaviour must be punished in such manner as will restore the tattered dignity of the court. The sentence imposed by the trial magistrate does not appear to me to be excessive. It does not at all smack of retribution; rather it is a fitting punishment meted out to an offender who should know better than many people about the need

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to preserve, maintain and enhance the dignity and esteem of the court. There is no basis for interfering with the sentence. The appeal against the sentence on the charge of contempt of court is dismissed.

The appellant was sentenced to two months imprisonment for the assault on the police officer in the second count. The assault consisted of knocking the complainant underneath the chin with the elbow. This was in the course of resisting an attempt by the officer concerned to restrain him. I consider that outside the context of the contempt charge, for which the appellant was separately convicted and sentenced, the assault was fairly minor. No serious injuries were sustained by the complainant. I am satisfied that a fine would have been the more appropriate penalty. The offence is however aggravated by the fact that the appellant is a police officer. I consider that a fine of \$1 000 is adequate for this offence. The appeal against sentence for the second charge succeeds to that extent.

In the result the appeal against conviction and sentence on the charge of contempt of court is dismissed and the appeal against conviction on the charge of common assault is also dismissed but that against sentence succeeds to the extent that the sentence is set aside and substituted with one of a fine of \$1 000 or, in default of payment, 2 weeks imprisonment.

Smith J, I agree.

Manase & Manase, appellant's legal practitioners.
Attorney-General's Office, respondent's legal practitioners.