

**HH 59-03**  
**Crb 1235/02**  
THE STATE  
**versus**  
HARDWORK CHINDURA

HIGH COURT OF ZIMBABWE  
HUNGWE J,  
**HARARE, 2 April, 2003**

**Criminal Review**

**HUNGWE J:** The accused was convicted of possession of 340 grams of unprepared dagga when he was not a holder of a permit issued in terms of the Act in contravention of section 4(a) of the Dangerous Drugs Regulations 1111/75 as read with section 19(1) of the Dangerous Drugs Act [Chapter 15:02]. He was sentenced to 18 months imprisonment of which 6 months was suspended on conditions of good behaviour.

The conviction is proper. It is the sentence that I find quite out of the normal run of cases. There are no adequate reasons to explain the extremely harsh sentence imposed. I have not sought an explanation for this aberration on the part of the trial court as I am advised by a letter in one of the review records that the trial Magistrate is ill and went off duty just after passing a string of unusually harsh sentences.

Had the trial magistrate given regard to the guidelines discussed by ADAM J and SMITH J in *State v Trust Kampota* HH 44-96 I am convinced the present sentence would not have been imposed. Having stated that -

"In assessing sentence I will take into consideration what is favourable to accused and then weigh it against the adverse features of this offence".

The trial magistrate made no mention of what these factors favourable to the accused were. Nor did he mention what adverse features of the offence which moved him to impose such a sentence might have been. He only stated two factors which were favourable to the accused i.e. that he is a first offender and that he pleaded guilty.

In *State v Mugabe* HH 192-86 the accused was convicted of unlawful possession of 399 grammes of dagga. His sentence of a fine of \$400 was confirmed

HH 59-03  
Crb 1235/02

on review but the alternative period of imprisonment in default of payment of the fine was reduced to 3 months imprisonment.

In *Mapurisa v State* HB 95-93 appellant was convicted of unlawful possession of 35 cobs of dagga weighing 611 grammes for which he was sentenced to 14 months imprisonment, half of which was suspended conditionally for 5 years. The State did not challenge the assertion, although the quantity was high, that it was to be used to appease his ancestral spirits. This led to the sentence being altered on appeal to a fine of \$1 000,00 and in addition 3 months imprisonment conditionally suspended for 5 years since the accused was a 50 year old first offender.

Quite clearly the sentence imposed by the trial magistrate is excessive and induces a sense of shock.

In view of the trial magistrate's error in imposing a sentence which in the circumstances is so manifestly excessive as to induce a sense of shock this Court is at large as to sentence. Accordingly the conviction is confirmed but the sentence is altered to 9 months imprisonment of which 3 months imprisonment is suspended for 3 years on condition the accused does not during that period commit any offence involving the possession, cultivation, sale or supply of dagga for which he is sentenced to imprisonment without the option of a fine. As the accused has served an equivalent of 6 months he is entitled to his release for which I have issued a warrant for his liberation.

KAMOCHA J, agrees.