HH 77-03
Crb 15850/03
THE STATE
versus
GEORGE DUBE SIXPENCE

HIGH COURT OF ZIMBABWE
HUNGWE J,
HARARE, 7 May, 2003

Criminal Review

HUNGWE J: The accused pleaded guilty to contravening section 4(a) of the Dangerous Drugs Regulations RGN 1111/75 as read with section 25(1)(a) of the Dangerous Drugs Act [Chapter 15:02].

His trial proceeded in terms of section 271(2)(b) of the Criminal Procedure and Evidence Act [Chapter 9:07]. The Statement of Agreed Facts revealed that police acting on information approached the accused at his home in Epworth. They searched inside the house but found nothing of interest. On searching outside they recovered 2,6 kilogrammes of dagga. Accused admitted that it was his.

He was sentenced to a fine of $50 000 or 6 months imprisonment. Further a 4 month imprisonment term was imposed but wholly suspended for five years on conditions of good behaviour.

The sentence imposed by the trail court is not in line with similar decided cases on account of its inadequacy as punishment for the admitted crime.

In *S* v *Mhuriro* 1985(1) ZLR 197 (HC) the appellant had been convicted of possession of 501 grammes of dagga and sentenced to 14 months imprisonment of which 9 months imprisonment was suspended on conditions. The fact that the appellant had not possessed the dagga for the purpose of supply to others moved the court to impose a fine. In its reasoning, it stated at p 201 -

> **"Had it not been established that the appellant did not possess the dagga for the purpose of supplying it to others, the sentence would have been entirely appropriate".**

In *Attorney-General* v *Sibanda and Others* HH 594/99 the Attorney-General appealed against the leniency of sentences imposed on the respondents who were unemployed female first offenders with children for possession of large quantities of dagga varying from 5,505 kgs to 10 kgs. The dagga was intended for resale in Bulawayo. The court held that while in general it is undesirable to subject first offenders to custodial sentences for trivial infractions of section 9(b) of the

Dangerous Drugs Act, in bad cases of possession or supply the courts have not hesitated to impose heavy custodial sentences on first offenders. It was held that a sentence of 2½ years with half suspended should have been imposed in respect of the offender with 5,05 kgs dagga.

In *S* v *Phiri* HB 76-90 it was held that the sentence of 4 years 3 months was appropriate. The features distinguishing that case from the present one are firstly that appellant had imported 1,24 kgs of dagga after illegally leaving and re-entering Zimbabwe. He was granted bail and again skipped the country's border and re-entered with 2.15 kgs of dagga. There are two distinct fractions of the Dangerous Drugs Act as well as the Immigration Act. The principle however remains that possession of substantial quantities of dagga call for a custodial sentence.

In *S* v *Chingwaru* HB 106-93 the Court confirmed the sentence of 24 months imprisonment with 6 months suspended on conditions, as appropriate for the possession of 1,4 kgs of dagga holding that cases of possession of dagga continue to rise thereby justifying the sentence imposed. I would add that what further justifies a custodial sentence in possession where there is no evidence that it was intended for supply to other persons is the quantity possessed. The larger the quantity the easier the inference that it was intended for supply, but since the accused is being charged for possession or has been convicted for possession it follows that the Court's recognise the temptation to supply as being inherent where dagga is possessed in large quantities.

This is what moved CHATIKOBO J to dismiss the appeal in *S* v *Morris* HB 3-96 where the appellant had been convicted of possession of 52 cobs of dagga and sentenced to l0 months imprisonment with 5 suspended on conditions. There was a risk, the Court held, that part of so much dagga might be supplied to others, even if it was only to friends and relatives without payment.

In the present case, the accused's personal circumstances are that he is unemployed without any assets or savings. He is also married with 2 children. There is nothing out of the ordinary which sets his case apart from the other similar cases. He had carefully hidden it outside his home so as to avoid the inevitable should police search. The inference is strong that he probably held it for supply. There is however no evidence or proof to that. This is precisely the risk CHATIKOBO J had in mind when he dismissed the appeal in *Phiri's* case *supra*.

Imposing a fine trivialises the offence. It must always be borne in mind that dagga is a mind-bending and habit forming drug. The court must be seen to be discouraging the use of this drug with all its dangerous consequences to the youth and the community at large. The quantity for which the accused was convicted is substantial. The inference that he was supplying is quite well founded in this case.

In the premises I withhold my certificate.