

THE STATE

Versus

OWEN NYAKUDZIWANZA

IN THE HIGH COURT OF ZIMBABWE
TAKUVA J
BULAWAYO 18 MAY 2023

Review Judgment

TAKUVA J: This matter was placed before me by the Registrar on automatic review. The accused was charged with contravening section 57 (a) of the Road Traffic Act Chapter 13:11 “unlawful contact with a motor vehicle” in that on 25 June 2021 he used a T-shaped metal bar to open the front driver’s door locking device of a motor vehicle belonging to the CMED (Pvt) Ltd. Police officers spotted and arrested the accused in the act. He pleaded guilty and was convicted on his own plea.

The State advised the court that the accused was a repeat offender in that he had four previous convictions. Despite that the court proceeded to impose community service. The exact sentence is “24 months imprisonment of which 6 months imprisonment is suspended for 5 years on the usual conditions. The remaining 18 months is suspended on condition accused performs 630 hours of community service ...”

I queried the appropriateness of the sentence where all the previous convictions involved an element of dishonesty. The court *a quo*’s response was as follows:

“In arriving at the sentence of community service, I had considered that the penal provision of the offence is a fine not exceeding Level 7 or imprisonment not exceeding 2 years. My view was that since it falls within the 24 months, then a sentence of community service must be preferred as was stated in the case of *S v Usavi* HH-182-10. I was also under an impression that the offence he was charged with was not related to the offence he was previously convicted on although during mitigation he indicated that his intention was to steal mealie meal which was inside the vehicle. It is in light of these mistaken impressions that I thought the previous convictions ought not to weigh heavily against him.

I do however conceded that since he is a repeat offender on crimes of dishonesty and has failed to reform from community service he was sentenced to before, the sentence I imposed was rather on the lenient side. I undertake to guard against like misdirection in future.”

Notwithstanding the court *a quo*'s prevarication, there is no doubt in my mind that the trial court failed to exercise its sentencing discretion judiciously and imposed a sentence that is woefully lenient. This case epitomizes a typical example of an accused who does not deserve the benefit of community service. The accused should have been sentenced to an effective term of imprisonment in view of his total lack of respect of the law.

In the result, I am unable to certify these proceedings as in accordance with real and substantial justice.

Accordingly, I withhold my certificate