

THE STATE
versus
ANESUISHE BHOBHO

HIGH COURT OF ZIMBABWE
MAMBARA J
HARARE; 3 March 2025

Review Judgment

MAMBARA J:

Introduction

This review judgment addresses the case of the State versus Anesu Bhubho, convicted under s 70(1)(a) of the Criminal Law Codification and Reform Act [*Chapter 9:23*], which pertains to the offense of having sexual intercourse with a young person. The Magistrates Court, on 10 February 2025, sentenced the offender to 24 months of imprisonment with 12 months suspended leaving an effective jail term of 12 months. The reasons given for opting for a custodial sentence were cursorily captured as follows; *“However owing to the seriousness of the offence and its prevalence the court will settle for a custodial sentence as community service or a fine will trivialise the offence.”* This judgment seeks to reassess the sentencing based on procedural considerations and the specifics of the case.

Factual Background

The accused, Anesu Bhubho, in or around July 2022, had sexual intercourse on four separate occasions with a minor. At the time the offence was committed, the victim was 15 years old and the offender was 25 years old. The act was consensual and the whole issue was resolved between the victim’s father and the offender and was kept under wraps. This incident was only reported in January 2025, following the death of the complainant's father, during whose funeral the previously secret compensation arrangement between the offender and the complainant's father was disclosed by the victim’s aunt. The father had accepted compensation from Bhubho

with a balance still outstanding at the time of his death. The revelation at the funeral prompted the official complaint leading to Bhobho's arrest and subsequent conviction.

This delayed response and the circumstances surrounding the revelation of the offense highlight significant mitigating factors that were not adequately considered in the initial sentencing. These factors suggest a reconsideration of the punitive measures imposed in favour of options that emphasize rehabilitation and community integration.

Legal Analysis

The treatment of first-time offenders in Zimbabwean jurisprudence has increasingly shifted towards non-custodial sentences, especially when the offenders show potential for rehabilitation. Notable cases such as *S v Washaya and S v Saineti* [2016] ZWHHC 106 stress the importance of considering community service instead of incarceration, particularly for youthful first-time offenders. The court articulated that this approach helps in decongesting prisons and provides offenders a second chance for self-rehabilitation without the harsh effects of imprisonment.

Furthermore, *S v George Mativenga* [2018] HH 46-18 underlines the need for sentences that balance the severity of the offense with the potential for the rehabilitation of the offender. In this particular reference, the High Court critiqued the use of maximum custodial sentences for first-time offenders, advocating for suspended sentences or community service that would integrate the offender back into society while serving as a deterrent for future offenses.

The current case reflects a similar context where the accused was a first-time offender, who had pleaded guilty and the victim impact statement suggested no permanent harm, indicating that the punitive aspect of the sentence could be reconsidered in favour of measures aimed at rehabilitation.

When it comes to sentencing, *S v Mudzviti* [2001] ZWHC50 illustrates the mandatory judicial duty to consider alternative sentencing options such as community service and to provide explicit reasons when dismissing such alternatives. Failure to do so amounts to a procedural error that warrants review. Further *S v Ncube* [2005] ZWHC 32 highlights the principle of proportionality in sentencing, necessitating a thorough explanation when harsher sentences are imposed.

The imposed sentence appears disproportionately harsh compared to similar cases, where more lenient sentences have been advocated for and applied. Notably, as a first offender, the accused would ordinarily be considered for non- custodial alternatives.

Considering the principles laid out in the cited cases and the specifics of this case, a substitution of the custodial sentence with community service is justified. Such a measure not only aligns with the modern judicial approach but also directly contributes to the accused’s rehabilitation process. There is need for a balanced approach to sentencing that considers the individual circumstances of the offender and the broader societal benefits of non- custodial sentences. It ensures that the principles of fairness, proportionality, and rehabilitation are upheld, providing a second chance to the first-time offender while maintaining respect for the law and societal norms. This underscores the judiciary’s commitment to evolving legal standards and the humane treatment of first-time offenders, promoting their integration into society as law-abiding citizens.

In the result, it is ordered as follows;

1. The 12-month prison term is hereby set aside and substituted with the following:

“The remaining 12 months imprisonment is wholly suspended on condition that the offender completes 420 hours of community service at a place to be determined by the magistrates’ court”

2. The matter is remitted to the trial court for the placement of the offender on community service. The time served in prison shall be counted as part of the community service to be served.

MAMBARA J:.....

CHIKOWERO J:.....Agrees