

THE STATE
versus
ASHLEY KUDZAI MAKONI

HIGH COURT OF ZIMBABWE
CHITAPI J
HARARE, 24 January, 2022

Review Judgment

CHITAPI J: The accused was on 9 October 2021 charged with and convicted of unlawfully possession of two plastic satchets of dagga which weighed a combined 95 grammes. It was alleged that on 8 October 2021, at a home in Nharira, Norton, the accused was arrested while in unlawful possession of the two satchets of dagga.

The accused pleaded guilty and was properly convicted. The accused had a relevant previous conviction for a similar offence and had a suspended twelve months imprisonment term hanging over his head. The accused was sentenced as follows:

“The accused to pay a fine of RTGS5 000.00 in default 2 months imprisonment. In addition 4 months imprisonment is effective. Further the 12 months imprisonment suspended on NTN 541/20 dated 16/10/20 is hereby brought into effect. Total 16 months imprisonment.”

The trial magistrate has referred the record to a judge of the court to correct what she believes is an irregular sentence which she imposed. She commented as follows:

“*State v Ashley Kudzai Makoni* CRB NTN 614/2021.

The above matter refers.

May you please place the record of proceedings before any Honourable Judge.

The trial magistrate acknowledges her fault in giving a double sentence and humbly asks the Honourable Judge to rectify the sentence as he or she deems fit.”

The accused was charged with contravening s 157 (1) (a) of the Criminal Law (Codification & Reform) Act, [*Chapter 9:23.*] The provisions of the section read as follows –

“157 Unlawful possession or use of dangerous drugs

(1) Any person who unlawfully –
(a) acquires or possess a dangerous; or
(b) ingests, smokes or otherwise consumes a dangerous drug; or
(c) cultivates, produces or manufactures a dangerous drug for his or her own consumption;
shall be guilty of unlawfully possessing or using a dangerous drug and, subject to subsection (2), liable to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both.”

The above sentencing provision provides for the imposition of a fine of up to level ten or the imposition of a prison term not exceeding five years or to both. (own underlining) The word both refers to the propriety of the imposition of one or both alternatives of a fine or imprisonment. The trial Magistrate had a discretion to impose a fine or both a fine and a term of imprisonment. She imposed a fine of 5 000RTGS and in addition imprisonment of four months. The sentence was therefore regular and does not require rectification. See *S v Mereki* HH 90-15.

The sentence however requires recasting in terms of grammar. It is accordingly corrected in its wording and not substance as follows:

“The accused is sentenced to pay a fine of RTGS 5000.00, in default two months imprisonment. In addition the accused is sentenced to 4 months imprisonment. Further the suspended sentence of 12 months imprisonment imposed on the accused on 16 October 2020 under case number NTN 541/20 is brought into effect.”

Save for the grammar correction as set out above, the proceedings are confirmed.

CHITAPI J.....