

TAYENGWA MUJURU  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
ZHOU AND CHIKOWERO JJ  
HARARE, 9 May 2022

### **Criminal Appeal**

*G Macheyo*, for the appellant  
*C Muchemwa*, for the respondent

ZHOU J: This is an appeal against sentence only imposed upon the appellant following a conviction on a charge of two counts of assault as defined in s 89 of the code. The appeal against conviction which had been noted was abandoned at the hearing. Appellant was sentenced to 18 months imprisonment of which 6 months imprisonment was suspended on condition of good behaviour. The State conceded that the effective sentence of 12 months imprisonment following suspension of 6 months on condition of good behavior was too harsh and induces a sense of shock.

Notwithstanding the aggravating features of this matter which include the fact that there were 2 counts involved and that the assaults were directed at an elderly couple, we believe that the overall sentence of 18 months imprisonment is indeed excessive and induces a sense of shock. The court *a quo* took both counts as one for the purposes of sentence but the overall sentence does not seem to reflect this approach, particularly when regard is had to the mitigating factors. The court *a quo* found that the complainants were the aggressors, hence there was provocation. There are also the facts that the appellant is a first offender, 52 years old, and a widower with a minor child to look after. In our view, a sentence of 12 months imprisonment with a portion thereof suspended on condition of good behavior would meet the justice of the case. The remaining 6 months imprisonment should also be suspended on condition that the appellant performs community service.

In the result, **IT IS ORDERED THAT:**

1. The appeal against sentence succeeds and the sentence imposed by the court *a quo* is set aside and substituted with the following:

“12 months imprisonment of which 6 months imprisonment is suspended for 5 years on condition that during that period the accused does not commit an offence involving violence upon the person of another for which he is sentenced to imprisonment without the option of a fine or to community service. The remaining 6 months imprisonment is suspended on condition that the accused performs community service.”

2. The matter is remitted to the court *a quo* for the placement of the appellant on community service.

CHIKOWERO J, agrees: .....

*Macheyo Law Chambers*, appellant’s legal practitioners  
*National Prosecuting Authority*, respondent’s legal practitioners