

THE STATE
versus
LEONARD MATAVO

HIGH COURT OF ZIMBABWE
MAXWELL J
HARARE, 19 August & 31 August 2022

Criminal Review

MAXWELL J: This matter was placed before me for review. The scrutinising magistrate's comments show that the trial magistrate did not properly apply his mind during the trial. The following are the comments: -

“2. The accused was convicted after a full trial on a charge of theft as defined in Section 113 (1) (a) and (b) of the Criminal Law Code. I raised a number of queries with the trial magistrate and he conceded that he erred in most instances.

3. The accused entered his sister's bedroom through the ceiling because the door was locked and US\$10 belonging to his sister (sic). The sister was not a witness in this case. From the above it was my view that a charge of unlawful entry in aggravated circumstances would have been appropriate. Though they stay at the same residence by gaining entry through the ceiling showed that he did not have the sister's authority or permission to enter her bedroom.

4. The trial magistrate did not explain to the accused his right to silence in terms of 188 (b) of the Criminal Procedure and Evidence Act which is an irregularity.

5. When he explained the provisions of the defence case (page 7) the explanation he gave to accused has got nothing to do with the provisions of section 198 and 199 of the Criminal Procedure and Evidence Act. Instead he explained the right to cross examine a witness and the consequences of failing to do so. It constitutes an irregularity

6. The record does not show that the trial magistrate explained to the accused the right to call witnesses but went on to hold it against the accused that he failed to call the sister as a witness.

7. At page 8 of the record, the trial magistrate explained what appears to be the purpose of cross-examination but it was given before the prosecutor cross-examined the accused. That was a misdirection.

8. At the end of the trial, the magistrate did not explain to the accused his right to sum up the case in terms of section 200 of Criminal Procedure and Evidence Act. Without that explanation it cannot be said when he waived that right he did so from an informed point of view. *S v Guyon* HMA 35/20.

9. The judgment by the trial magistrate does not follow a logical sequence. Instead of laying the charge and facts of the matter, he starts by commenting on accused's defence. There is no comment on the credibility of the State's sole witness or that of accused. There is no sign the trial magistrate

applied the cautionary rule. The trial magistrate was supposed to be guided by the following cases on the structure of judgment. *State v Thubelihle Ncube* HB 199/15 and *S v Olausheas John Maimba* HH 293/14.

10. The last part of the sentence imposed by the trial magistrate is rather vague. I believe it must be altered so as to inform the accused in detail the conditions of suspension so that it reads “**The remaining 2 months imprisonment is wholly suspended for 5 years on condition accused does not during that period commit any offence involving dishonesty of which upon conviction he is sentenced to imprisonment without the option of a fine.**””

I agree with the scrutinising magistrate whose thoroughness is commended. Magistrates play a vital role in the administration of justice and have the gravest responsibility as they must conscientiously perform their duty to administer justice fairly. To that end, they must conduct criminal trials in a fair manner, directing and controlling the trial according to recognised rules and procedures. The trial magistrate must explain the procedures to an unrepresented accused. He has a duty to assist an unrepresented accused who shows an insufficient understanding of the various stages of a trial, the requirements of each stage, his rights and the consequences of a failure to exercise those rights.

In this case the trial magistrate did not execute his duty conscientiously.

I am unable to certify that these proceedings are in accordance with real and substantial justice and accordingly withhold my certificate.

The trial magistrate is directed to ensure that the accused is informed of the condition of suspension which is that “ **The remaining 2 months imprisonment are suspended for 5 years on condition accused does not during that period commit any offence involving dishonesty of which upon conviction he is sentenced to imprisonment without the option of a fine.**””

MAXWELL J:.....

MANYANGADZE J:.....Agreed