

THE STATE  
versus  
ANESU GWAFWA

HIGH COURT OF ZIMBABWE  
FOROMA J  
HARARE, 26 October 2022

### **Review Judgment**

**FOROMA J:** The accused was charged with 2 counts of robbery when he appeared in the Chegutu Magistrates Court it being alleged in the first count that on 24 January 2021 at Jack Farm Selous he unlawfully and intentionally used violence upon Ngoni Jakata by assaulting him with a whip, open hand and booted feet all over his body in order to induce fear in the said Ngoni Jakata who had lawful custody of the property and stole ZW\$400 bond notes US\$11 and 40kg maize and went away and count 2 on 24 January 2021 and at Jack Farm Selous the accused unlawfully and intentionally used violence against Ellias Mare by assaulting him with open hands and booted feet in order to induce fears on the said Ellias Mare who had lawful custody of the property and stole one black belt, 2kg maq washing powder, 2kg flour, two bottles of cough tea and two litres of fresh milk and went away.

Accused pleaded guilty to both counts and he was dully committed of both counts on his plea of guilty to both. A perusal of the record shows that in mitigation he pleaded that he was a first offender aged 24 years employed as a farmer earning an average of about US\$100 per month married with 2 minor children aged 5 years and 3 years. In response to the court's question anything else he said "I wish to be forgiven". I returned all the property to the complainant in count 1 which the public prosecutor confirmed.

The court sentenced him as follows:

Count 1 -15 months imprisonment

Count 2 -15 months imprisonment. Of the total 30 months one month was suspended on condition accused restitution US\$100 or \$10 836 by 23 April 2021.

When the matter came before me on automatic review I raised a query with the trial magistrate as to why in sentencing the accused a young first offender who had pleaded guilty no portion of the sentence was suspended on condition of good behaviour bearing in mind the generally accepted approach of the courts to suspend a portion of any prison term imposed on

a first offenders as an encouragement to reform. The magistrate in response accepted his error. It is accepted that robbery is such a serious offence it cannot appropriately be punished by other than an imprisonment sentence. It has been indicated that the accused did not make any restitution. The sentence meted to the accused was as a result of the misdirection unduly harsh and deserves to be interfered with by suspending a portion of the effective imprisonment on condition of good behaviour. But for the fact that the trial magistrate is on suspension I would have remitted the matter to the court *a quo* for the magistrate to revisit the sentence in light of the foregoing observations. I accordingly order that of the remaining 29 months a further 6 months is suspended for a period of 5 years on condition the accused is not convicted of an offence of which assault or dishonesty is an element and for which he is sentenced to imprisonment without the option of a fine or community service.