

FARAI EVANS MUKORERA
versus
THE STATE

HIGH COURT OF ZIMBABWE
CHAREWA & MUZENDA JJ
MUTARE, 15 June and 27 July 2022

Criminal Appeal

Appellant in person
Mrs *J. Matsikidze*, for the defence

CHAREWA J: The appellant was arraigned before the Magistrate's Court charged with 4 counts as follows:

“Contravening s 60 A(3)(a)(b) of the Electricity Act [Chapter 13:19] (four counts) ‘tempering, transmitting, distribution or supplying electricity with the result that any supply of electricity is interrupted or cut off, damages, destroys with any apparatus for generating, transmitting, distributing or supplying electricity.’

Count 1

In that on the 10th day of May 2017 and at Zesa Substation 33, near number 140 Second Street, Mutare, Farai Evans Mukorera without lawful excuse tampers with apparatus for generating, transmitting, distributing or supplying electricity that is to say accused cut, and stole Zesa cables thereby contravening the said Act.

Count 2

In that on the 10th day of May 2017 and at Zesa Substation 33, near number 140 Second Street, Mutare, Farai Evans Mukorera without lawful excuse tampers with apparatus for generating, transmitting, distributing or supplying electricity with the result that supply of electricity is interrupted or cuts, damages or interferes with apparatus for generating supply of electricity that is to say accused cut and stole T.P. breakers thereby contravening the said Act.

Count 3

In that on the 22nd day of May 2017 at St Dominic Econet Booster, Mutare, Farai Evans Mukorera without lawful excuse tampers with apparatus for generating, transmitting, distributing or supplying electricity with the result that supply of electricity is interrupted or cuts, damages or interferes with apparatus for generating supply of electricity that is to say accused cut and stole T.P. breakers from Zesa Substation and meters thereby contravening the said Act.

Count 4

In that on the 22nd day of May 2017 at St Dominic Econet Booster, Mutare, Farai Evans Mukorera without lawful excuse tampers with apparatus for generating, transmitting, distributing or supplying electricity with the result that supply of electricity is interrupted or

cuts, damages or interferes with apparatus for generating supply of electricity that is to say *accused cut and stole 1 x 60 I.T.P pole Zesa MCB thereby contravening the said Act.*”

He was found guilty on his own plea on all 4 counts and sentenced to 10 years imprisonment on each count. The sentences on count 2 and 4 were ordered to run concurrently with those on counts 1 and 3.

He appealed against conviction and sentence. We dismissed, *ex tempore*, the appeal against conviction and sentence and allowed the appeal against unlawful splitting of charges on 15 June 2022. On 2 July 2022, appellant wrote a letter, received at the Registry on 19 July 2022, requesting reasons for judgment. These are they:

Unlawful splitting of charges

It is apparent from the summary jurisdiction that on 10 May 2017, appellant is alleged to have accessed ZESA substation 33, cut and stole T.P. breakers, and thus tampered with apparatus for generating, supplying, transmitting or distributing electricity. The alleged conduct was a single continuing act which was unlawfully split into two components resulting in 2 charges. Further, on 22 May 2017 appellant was alleged to have tampered with an Econet Booster at St Dominic’s School, by cutting and stealing T.P. breakers supplying electricity to the booster. This too was a single continuing act for which it was improper to split into two charges. It is trite that where the charges arise from the same or single course of conduct, the offences must be treated as one for purposes of sentence. See *State v Chinemo* 1985(1) ZLR 32 and cases cited therein. The state understandably conceded the point.

Conviction

The appellant pleaded guilty to the charges. The essential elements were adequately placed before him and he acceded to them such that we could not fault the conviction on the two valid charges we identified.

That the court made a globular canvassing of the essential elements did not, in our view prejudice the appellant as the purpose of traversing essential elements is to ensure the accused understands that to which he is pleading and that his plea is genuine. In any event, the essential elements of the 2 valid charges are the same. It would have been unnecessary repetition to traverse them separately. In the absence of any averments by appellants of influence by factors other than those placed on record, the conviction was proper.

Sentence

While at first glance, the sentence is improper given the finding of unlawful splitting of charges, we are of the view that no prejudice to the appellant in fact emanated therefrom given that the sentences were ordered to run concurrently. Effectively, appellant was sentenced to the mandatory 10 years imprisonment on each of the two charges we found to be appropriate. In the circumstances, there is no justification for interfering with the sentence, given that no special circumstances for departing from the mandatory sentences were submitted. Further, there was no misdirection leading to a substantial miscarriage of justice as the effective 20 years imprisonment meted by the court *a quo* falls within its sentencing discretion on 2 counts.

MUZENDA J agrees _____

National Prosecuting Authority, state's legal practitioners.