

THE STATE

VERSUS

ABRAHAM TSHUMA

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 24 JUNE 2010

Review Judgment

CHEDA J: This matter was forwarded to me for review. Upon perusal I formed an opinion that the sentence imposed by the trial court was on the lenient side.

The facts of the matter as presented by the state are herein stated below.

The accused is a male adult residing at Magama Village, Chief Chizungu in Mberengwa and is unemployed. Police acting on information searched his house and found 4 dagga plants measuring 1.5m each in the house.

Accused was arrested. He was brought to court where he pleaded guilty, was convicted and sentenced as follows:-

“4 months imprisonment wholly suspended for 3 years on condition the accused does not within that period commit any offence involving unlawful use, possession or dealing in dangerous drugs and for which upon conviction he is sentenced to imprisonment without the option of a fine. In addition the 4 plants of dagga are forfeited to the State.”

Upon raising the query the trial magistrate responded by stating that the accused did not cultivate the dagga but obtained it from a friend and he wanted to smoke it. To him that

reason was plausible enough to justify the imposition of a 4 months wholly suspended sentence.

It is obvious that the learned trial magistrate did not seek wise counsel from case authorities with regards to these type of offences which authorities are in abundance at his disposal.

Possession of such a large quantity of dagga can not be said to have been for personal consumption. It is clear that it was for commercial purposes. The court found it easy to believe the accused's story that he obtained it from a friend. With all due respect to the learned trial magistrate, there is absolutely no legal basis for him to have believed such an explanation as the quantity of the dagga does not support such an excuse.

Possession of dangerous drugs is a very serious offence and the courts have for time without number often explained the need for deterrent sentences to be passed; see *S v Aseneta* HH 2/90; *S v Ndou* GB 34/75 and *S v Chademoyo* AD 218/76.

The social and health hazards of engaging in dangerous drugs are well known by all literate persons. In *S v Sixpence* HH 77/03, Hungwe J remarked that "dagga is a mind-bending and habit forming drug," therefore, the courts must be seen to impose sentences which emphasize that point as opposed to sentences which are so lenient, so as to trivialise the offence. This case is one of those cases which has been left yawning for justice.

The learned trial magistrate has gone further in his reasoning, that accused did not cultivate the dagga because it was found inside the house. Again with all due respect to him, I

fail to see where the dagga would have been placed after harvest. This reason again is neither logical nor legal.

To impose a non-custodial sentence in the circumstances is a misdirection on the part of the magistrate.

The sentence imposed is too lenient and I accordingly withhold my certificate.