

THE STATE

VERSUS

GIVEMORE NCUBE

IN THE HIGH COURT OF ZIMBABWE

CHEDA J

BULAWAYO 14 JUNE 2012

Review Judgment

CHEDA J: This is a review judgment. Upon perusal of the record I noticed that the sentence was couched as follows:

“15 months imprisonment of which 3 months imprisonment is suspended on condition of good behaviour. 12 months effective.”

The accused was charged with two counts, the first count was unlawful entry and the second was theft.

The facts of the case which were admitted to, by the accused person are that he unlawfully broke into N and T Private Properties and stole property valued at US\$415-00 of which US\$350-00 was recovered. He pleaded guilty, was convicted and sentenced as stated above.

Nothing turns on the conviction, but, it is the way the sentence was couched which is of concern to me. When I raised the query with the learned trial magistrate, she admitted that an error was made as she failed to indicate that the sentence was taken as one for the purposes of sentence.

When sentences are taken as one for the purposes of sentence, that fact must clearly appear on the record lest one thinks that one or some counts were omitted or left out. If left out the record of proceedings would be incomplete which renders it irregular.

The second issue is with regards to the suspension of the sentence, it was also incompetent for the learned magistrate to simply state that part of the sentence is suspended

on condition of “good behaviour”. Good behaviour is too general a term to an extent of being meaningless. The accused should be clearly advised what it is that he should not do in order to avoid being found on the wrong side of the law in future. He should not be left guessing which may result in him fearing to live a full life because of the ambiguity of his suspension.

It should be borne in mind that part of the sentencing principle is to avoid repeat offences and this can only be adequately effected by clearly advising the accused what to do or not to do in order to check and regulate his future conduct. Where part of the sentence is suspended, the accused need to be knowledgeable about the risk and severity of any future specific wrongdoing on his part.

It is in that regard that those who are charged with meting out justice on others should bear in mind the requisite for clarity in their sentences.

In *casu* the sentence was not properly passed as the suspended sentence is ambiguous. There is, therefore, a need for interference in this matter. The convictions are confirmed. The following is the order:

Order

- (1) the sentence is set aside and is substituted by the following:
15 months imprisonment of which 3 months imprisonment is suspended for 5 years on condition accused does not during that period commit any offence of which unlawful entry or dishonesty is an element for which upon conviction accused is sentenced to imprisonment without the option of a fine.

Cheda J.....

Kamocha J agrees.....