THE STATE

VERSUS

WELLINGTON GUMBO

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 12 JULY 2012

Criminal Review

CHEDA J: This case was referred to me for review.

The accused together with his accomplice one Edward Ndlovu who is presently hospitalised and Sipho Bothwell Ndlovu who is at large armed themselves with pistols and approached complainant at his home. They used threats of violence forcing complainant to surrender a cellphone with a Libertie line and R800 ($800). The State outline refers to R800-00 while in his evidence chief the complainant referred to $800-00. During the commission of this offence either one or all of them fired pistols towards the complainant, but, missed him.

They were subsequently arrested after a high-speed chase. The value of the stolen property is R1200-00 and nothing was recovered.

Accused was charged with armed robbery. He pleaded not guilty, but, was convicted and sentenced as follows:

> "8 years imprisonment of which 4 years imprisonment is suspended for 5 years on condition accused does not within that period commit an offence involving violence or dishonesty on the person of another which upon conviction accused is sentenced to imprisonment without the option of a fine."

There are two issues in this matter. The State outline and the complainant's evidence are different in terms of the currency forcibly taken from the complainant. The State outline refers to R800-00 while the complainant refers to US$800-00. The court should have verified the correct currency as these currencies have an adverse bearing on the sentence in view of their economic strengths.

The second issue relates to the sentence itself. To me this is a very serious offence as it was committed in aggravating circumstances. For that reason the trial court should have passed a harsh sentence as opposed to such a shockingly lenient sentence.

The sentence was passed by an acting Regional Magistrate a Mr *G. Sengweni* who is expected to have amassed adequate experience from his duties as a junior, senior and provincial magistrates to an extent that he is expected to approach sentencing in a more objective manner. One does not, therefore, expect such a lenient sentence in the circumstances. While the principle that sentencing is the province of the trial court, this is a discretion which should be exercised judiciously. In *S v Mgemezulu* HB123/12 and *Pauline Moyo v State* HB132/12, I dealt with the need for an objective approach in sentencing. In *Pauline Moyo'*s case *supra* as page 2 of the cyclostyled judgment I stated:

> "It is trite that sentencing is the most difficult aspect of a judicial officer's decision yet it is arguably most important as it seals the conclusion of a criminal trial. It is for that reason that serious thought should be given before sentence is passed on an individual. It is a legal operation which derives from both statute and case laws. The sentence should, therefore, have the basic knowledge of the appropriate law."

In other words judicial officers should meticulously and diligently acquit themselves in sentencing those who appear before them, lest the judiciary delivery system falls into dispute. A sentence passed should be commensurate with the crime committed so as to maintain both a judicial and social equilibrium.

In *casu* an effective four (4) years imprisonment for such a heinous crime is judicially unacceptable and infact makes a complete mockery of our sentencing system which is clearly known or at least ought to be known by all judicial officers of the acting Regional Magistrate's standing.

I have taken the liberty of seeking the opinion from my brother NDOU J he also agrees with me that indeed the sentence is palpably lenient. The appropriate effective sentence should have been at least 10 years.

For the above reasons I can do no better than withhold my certificate.