

**THE STATE**

**Versus**

**PATRICIA HAMA**

IN THE HIGH COURT OF ZIMBABWE  
CHEDA J  
BULAWAYO 20 SEPTEMBER 2012

Review Judgment

**CHEDA J:** This matter was referred to me as per this jurisdiction's procedure for review on the 17<sup>th</sup> March 2008. Upon perusal, I noticed that there were some anomalies on the record and I raised a query on the 19<sup>th</sup> March 2008 which appears below;

"The above record refers.

May the learned trial magistrate clarify the following urgently:-

- (1) why his name does not appear on the Review Case Cover;
- (2) justify the passing of such a shockingly lenient sentence for such a crime, and
- (3) have the whole record typed and submitted to the Registrar of the High Court at his earliest convenience in any case, not later than the 24<sup>th</sup> April 2008."

I did not receive a response to my said query.

Unfortunately the magistrate in question has since passed on. The present provincial magistrate came across the record in the late magistrate's office and forwarded it to me.

In my minute to the learned magistrate I had raised two administrative and one judicial issues which unfortunately have not been addressed, due to his demise.

The first issue it is to do with the need for magistrates to endorse their names and rank on the Review Case Covers. This is essential, as it enables the Reviewing Judge/Court to establish not only the identity of the magistrate, but, also his/her jurisdiction in handling the matter under review.

The second issue relates to the delay in forwarding the record for typing as per my request. There was no explanation as to why the learned trial magistrate did not cause the record to be typed and forwarded to me timeously. Infact there has been an inordinate delay

in forwarding this matter. It is clear that the learned magistrate did not bother to attend to my query. This conduct is unacceptable and all magistrates are urged to take heed that it is their duty to attend to matters for review timeously and most importantly where a query has been raised.

The third and final issue relates to the sentence imposed. The accused was employed by the complainant at Crocodile Resettlement, Esigodini. On the 13<sup>th</sup> January 2007 she took advantage of the absence of her employer and stole her property worth Z\$297500-00 and only Z\$179500-00 (old currency) was recovered. She pleaded guilty, was convicted and sentenced as follows:

“15 months imprisonment wholly suspended for 5 years on condition during that period accused does not commit any offence involving dishonesty and for which she is sentenced to imprisonment without the option of a fine.”

I was concerned with the leniency of the sentence, in view of the circumstances, namely, that the accused was an employee of the complainant.

I had asked for the learned trial magistrate’s comments, but, that was not to be since March 2008 up to his tragic death in July 2012.

However, in my opinion the sentence imposed was lenient in the circumstances bearing in mind that accused though she was a first offender, stole from her employer and the value of the stolen property was quite substantial. Betrayal of trust of this nature normally attracts an effective prison term. In the circumstances the sentence passed was lenient.

Judicial officers have a duty to act efficiently, diligently and professionally. Their failure to meet the minimum standards expected of them results in serious prejudice to the victim of a crime and such conduct collides with the smooth running of the judiciary process. This conduct is therefore, discouraged and condemned.

The learned magistrate did not deal with this matter with the expected diligence of a judicial officer.

I should add that I have discussed this issue with my brother Judges namely NDOU and MAKONESE JJ who have also come across such ineptness on the part of the now departed

magistrate. In my view there is a need for the Chief Magistrate to revisit the Criminal Record Book checking system in his various stations in order to curb this conduct which some magistrates may be involved in at their respective stations.

In conclusion, I am of the view that the proceedings in this matter are not in accordance with real and substantial justice. My certificate is accordingly withheld.

Cheda J.....