

THE STATE

Versus

ALBERT MAJAHA

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 18 OCTOBER 2012

Review Judgment

CHEDA J: The accused was charged with contravening section 114(2)(a) of the Criminal law (Codification and Reform) Act [Chapter 9:23].

Upon review I noticed that the sentence was couched in a rather unusual manner as it is thus couched;

“12 months imprisonment wholly suspended for 5 years on condition that you are not convicted of an offence involving an element of dishonesty and sentenced to imprisonment without the option of a fine. In addition pay a fine of \$400 or in default of payment 12 months imprisonment”.

The proper and accurate way is to start with the effective sentence, then the imposition of a fine in default of payment a term of imprisonment follows.

The additional term of imprisonment then comes second as this does not come into operation immediately, but, is conditional upon the commission of an offence of a similar nature.

The sentence of 12 months imprisonment wholly suspended for such an offence is rather on the harsh side. I am of the opinion that a sentence between 4-8 months imprisonment would have done justice to this matter.

Order

The conviction is therefore confirmed but the sentence is set aside and is substituted by the following:

- (1) Accused is sentenced to pay a fine of \$400-00 in default of payment 4 imprisonment.

- (2) In addition 6 months imprisonment is wholly suspended for 5 years on condition that the accused does not commit any offence of which dishonesty is an element for which upon conviction he is sentenced to imprisonment without the option of a fine.

Cheda J.....

Cheda AJ agrees.....