

THE STATE

VERSUS

FAZO NDLOVU

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 24 JANUARY 2013

Review Judgment

CHEDA J: In this matter the accused a male adult was charged with contravening section 137 of the Criminal law (Codification and Reform) Act [Chapter 9:23]. He pleaded guilty to this charge, was convicted and sentenced as follows:

“16 months imprisonment of which 3 months imprisonment is wholly suspended for 5 years on condition that the accused does not within that period commit any offence involving fraud of which upon conviction the accused is sentenced to imprisonment without the option of a fine.”

I was not satisfied with the sentenced imposed by the learned trial magistrate’s reasons and requested him to justify it. His response was in this form;

“The trial magistrate went on (sic) extra mile given that after he suspended portion of accused’s sentence on condition of restitution as will appear on the record he went on to cause the accused to perform 195 hours of Community Service. This was simply done in a bid not to trivialize the offence.

Be that as it may I accordingly stand guided.

Thanking you for your guidance in this present case and in future.

(signed)

T. MUCHEMWA”.

The facts are that, the accused who was unemployed misrepresented to the complainant whose electricity had been disconnected, that he could have it reconnected by the

electricity authority, being Zimbabwe Electricity Supply Authority. He was given \$1400-00 to go and pay. He, however, did not pay, but, converted the money to his own use.

Fraud is a very serious offence, moreso, when it involves such a large sum of money. While the trial magistrate may try to justify his sentence, the reasons given are far from convincing. This type of fraud in my view calls for an effective prison term. The sentence imposed gives an impression of a magistrate going out of his way to avoid effective imprisonment at the expense of societal expectations in general and the complainant in particular. While community service is indeed an integral part of our judicial system, it should not be used to justify sentences which are a far cry from the sentences which should be arrived at after a proper application of judicial officer's mind.

Sentences imposed by the courts should be viewed as fair and just by all right thinking members of our society. Failure to achieve this object will result in the judicial system falling into disrepute.

The sentence imposed is not justified in the circumstances. It is therefore, not in accordance with real and substantial justice.

For the above reasons my certificate is withheld.

Cheda J.....