

THE STATE
versus
MELUSI MUZA

HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 8 OCTOBER 2015

Criminal Review

MAKONESE J: A judgment has a significant purpose in our justice system. It is the only official document that reflects the outcome of any legal proceedings brought before the court. It is generally recognized that the purpose of the judgment is as follows:

- a) provide a brief synopsis of the evidence presented in court
- b) set out the facts found as proven
- c) provide a brief statement of the law relevant to the case
- d) explain to the parties to the proceedings the reasons for the decision

The accused in this matter appeared before a magistrate at Western Commonage on a charge of contravening section 3 (1) as read with section 4 (1) of the Domestic Violence Act [Chapter 5:16]. The allegations were that on 14 May 2015 and at house number 3430 Nketa 7, Bulawayo, the accused being the husband of Virginia Muza unlawfully and intentionally physically abused her by assaulting her with a plank a number of times on the upper limbs. The accused had accused the complainant of gossiping about him with her friends. This was denied by the complainant leading to the altercation. The accused was convicted after a full trial and was sentenced to pay a fine of \$200 in default of payment 60 days imprisonment. The scrutinizing Regional magistrate was of the view that the judgment of the trial court was scant and lacking in substance. He sent a minute to the trial magistrate in the following terms:

“The accused was convicted after trial of contravening section 3 (1) (a) as read with section 4 (1) of the Domestic Violence Act [Chapter 5:16].

I have read the judgment reproduced hereunder.

“JUDGMENT

Accused is facing allegations of contravening section 3 (1) (a) as read with section 4 (1) of the Domestic Violence Act: Physical Abuse.

Accused denies the allegations in that he did not assault the complainant.

Analysis of Evidence

State opened its case by calling complainant who narrated the circumstances of the alleged physical abuse. Witness told the court that accused struck her with a plank. I took the witness credible as found no reason why she would lie against the accused. The second witness was Priscilla Zondo a neighbor to accused who told the court that she saw accused assault complainant with a plank. I also took the witness credible as I found no reason why he would lie against accused. Also witness gave testimony consistent to that given by the first state witnesses. Therefore I found impressive corroboration on the part of state witnesses. It was the defence case through the accused who maintained that he did not assault complainant. However, I took accused’s defence with caution as he is partly (*sic*) to the matter. At the close of the case I found the state case to have more substance. I found no reason why the witnesses would lie against accused. I conclude that the state proved its case beyond a reasonable doubt against the accused. Accordingly I find accused guilty as charged.

I have read it a number of times.

The learned trial magistrate is a senior magistrate. There are basics of writing a judgment which is adhered to will distinguish the work of a judicial officer from that of a lay person.....”

The trial magistrate responded to the query by the scrutinizing magistrate with a short and rather discourteous response as follows:

“I acknowledge receipt of your scrutiny minute dated the 16th July 2015. I find the judgment I wrote proper. My understanding which would be erroneous is that once I deliver judgment and sentence I become *functus officio*. Therefore I cannot write a second judgment.

I ask that the record be referred to the high Court in terms of section 58 (3) (b) of the Magistrates Court Act

Upon receipt of the record I invited the trial magistrate to explain whether in his view his judgment met the requirements of the law. The trial magistrates’ response is couched in the following terms:

“I acknowledge receipt of your review minute. In my respectful view the judgment delivered met the requirements of the law. Here the question before the court was whether or not the accused physically abused complainant as alleged by the state. Through the short trial the trial magistrate was satisfied with the evidence led on the part of the state and found the accused guilty of the offence charged.

The learned regional magistrate had instructed that I produce a proper judgment and resubmit record. My interpretation of this was that I was to write a second or proper judgment. I do not know if this was proper as after delivering the judgment and sentence I became *functus officio*.

May the learned Judge take corrective measures to rectify the defect”

It is evident from the comments of the trial magistrate that he took the comments of the Regional magistrate to be an instruction for him to re-write the judgment. I agree with the trial magistrate that once he had delivered judgment and pronounced the sentence he became *functus officio*. The trial magistrate could not write a second judgment. In my view, however, the essence of the query was to point out to the trial magistrate that his judgment was scant, lacked detail and was not an acceptable record of the proceedings. The trial court’s judgment as reproduced in this judgment does not comply with the expected standards of judgment writing.

It is trite that a judgment must be reasoned and the reasons for the conviction and sentence must be clearly articulated. The general structure of a judgment is that it must set out the facts of the matter. The judgment must set out the law. The law must be applied to the facts as outlined in the judgment. The judge or magistrate must then provide a conclusion based on an assessment of the facts and the law on the subject. The judgment must be modified to suit each particular case, ensuring that the thought process of the court is clearly followed and understood.

See the cases of *S v Makava and Another* 1991 (1) ZLR 142 (S); *S v Ncube and Others* 2003 (1) ZLR 581, *State v Maimba* HH 293/14.

The words of John Reid Rowland in *Criminal Procedure in Zimbabwe* at pages 10-24, are apposite; the learned author remarked as follows:

“Essentially, the judgment should contain a brief summary of the facts found proved and the trial court’s appraisal of the credibility of each witness, stating what evidence was accepted or rejected and giving reasons for its decision.”

It is clear that the trial magistrate in *casu* gave a rumbling account of what he termed an “analysis of the evidence.” As indicated by the scrutinizing regional magistrate, the trial

magistrate was a senior magistrate who had the necessary training to craft a well-structured and well-reasoned judgment. I have also read the trial court’s judgment a number of times and I am satisfied that it does not comply with the expected standards of what one can term a judgment.

In so far as the conviction and sentence is concerned, I have no reason to interfere with both conviction and sentence. The sentence falls within the range of similar cases and is proper in all the circumstances of the case.

In the circumstances, I urge trial magistrates to ensure that their judgments serve their purpose. They must articulate, the facts and the law. The evidence of witnesses must be set out and summarized. The trial court must explain its reasons for accepting or rejecting the evidence of a particular witness.

For the reasons stated herein, I am unable to certify the proceedings as being in accordance with real and substantial justice and I accordingly withhold my certificate.

Makonese J.....