

**THE STATE**  
**versus**  
**JACOB CHIBHUNHE**  
**and**  
**MASIMBA CHIBHUNHE**  
**and**  
**JAMES MAHACHI**

IN THE HIGH COURT OF ZIMBABWE  
KAMOCHA J  
BULAWAYO 21 MARCH 2015

Transfer for Sentence

**KAMOCHA J:** The three accused persons were sentenced on 21 March, 2014. The following are the reasons for the sentences imposed by the court. These three accused were arraigned before a provincial magistrate in Gweru and all pleaded not guilty to 18 counts of contravening section 60A (3) of the Electricity Act (Chapter 13:19) as read with section 2 (3) (b) of the Electricity Amendment Act published in Statutory Instrument number 12 of 2007 i.e. vandalise, cut, damaged, destroyed, or interfered with any apparatus for transmitting and distributing or supplying electricity. They had been jointly charged with a fourth colleague who was found not guilty and acquitted of all the 18 counts at the end of the trial.

Accused Jacob Chibhunhe and James Mahachi were found not guilty and acquitted of one count but were found guilty as charged of 17 counts. Accused Masimba Chibhunhe was found guilty as charged of all the 18 counts.

The trial magistrate referred the matter to this court for sentence as she felt that in view of the penalty provided by the Act and the number of counts involved, she lacked jurisdiction to sentence the accused properly.

After going through the record of proceedings I held the view that the convictions were proper and accordingly confirmed them.

After special circumstances were explained to the accused persons they all said they understood them and each one was invited to address the court if they had any such special circumstances. Each one of them did address the court.

All of them raised their personal circumstances which did not amount to special circumstances. There was nothing extra ordinary about what they said. For instance Masimba Chibhunhe said the reason why he committed the offences was to raise money for the hospitalization of his wife who had undergone an operation. The complication was that the stitches of the operation got broken. Further, he said he had two very young children aged 4 years and 10 months respectively. In addition he has two of his late brother's small children to look after. They are school going. He also has the burden of looking after his mother who suffered a stroke.

Committing a crime due to financial hardships does not amount to special circumstances. This court held that what the accused persons said did not amount to special circumstances.

Section 60A (3) of the Electricity Act [Chapter 13:19] provides thus:

- “(3) any person who, without lawful excuse, the proof whereof shall lie on him or her
- - (a) tampers with any apparatus for generating transmitting, distributing or supply electricity with the result that any supply of electricity is interrupted or cut off;
  - or
  - (b) cuts, damages, destroys or interferes with any apparatus for generating, transmitting, distributing or supplying electricity
- shall be guilty of an offence, and if there are no special circumstances peculiar to the case as provided for in subsection (4), be liable to imprisonment for a period of not less than ten years.”

A court sentencing a person where it is held that there are no special circumstances peculiar to the case is not permitted to suspend any part of the sentence. Subsection 5 of section 60A of the Act provides as follows:

- “(5) a court sentencing a person to imprisonment under subsection (2) or (3) shall not order the suspension of any part of the sentence if the effect of such suspension is that the convicted person will serve –
- (a) in the case of subsection (2), a period of less than one year; or
  - (b) in the case of subsection (3) a period of less than ten years.”

Jacob Chibhunhe and James Mahachi were found guilty of 17 counts out of the 18 counts they were facing while Masimba Chibhunhe was found guilty of all the 18 counts.

During the months of February to June 2013 the accused persons went on a spree of draining transformer oil in Gweru. They drained transformer oil from no less than 18 transformers. They drained a total of 11 530 litres of oil. The value of the oil and damage caused to the transformers was no less than \$96 750,00. Their gang operated under cover of darkness between the hours of 2000 hours and 0800 hours. They meticulously planned the executions of the crime. Their actions had far reaching consequences to the community where the transformers were tempered with. Industries in the affected areas were not spared by the non availability of electricity resulting in loss of production. The level of sophistication of the accused persons was very high, that is why they were able to execute such perilous operations. There is high voltage at the transformers but they still managed to drain large quantities of oil.

They had ready market where they were able to dispose of the oil. The offences were committed within short spaces of each other.

Jacob Chibhunhe and James Mahachi who were convicted of 17 counts would have been sentenced to  $17 \times 10 \text{ years} = 170 \text{ years}$  imprisonment while Masimba Chibhune would have been sentenced to  $18 \times 10 \text{ years} = 180 \text{ years}$  imprisonment.

These sentences, in my view, are draconian, abnormal and excessive to the extreme and induce an extreme sense of shock.

Even if one were to order that half of the sentences of the 17 counts run concurrently with the sentences of the second half at 10 years imprisonment per count and do the same with the sentences on the 18 counts the end result would be effective sentences ranging from 80 years

imprisonment to 90 years imprisonment which would, in my view, still be excessive to the extreme and draconian.

In the circumstances, I would hold that there are special circumstances peculiar to this particular case in so far as the total sentences are concerned. The circumstances are out of the ordinary, in my view, and I would, in the result impose sentences which are less than the minimum mandatory sentence of ten years imprisonment on each count. The sentences will be ameliorated by making some of them run concurrently.

Jacob Chibhunhe and James Mahachi are each sentenced to 3 years imprisonment for each of the 17 counts. The sentences on count one and two shall run concurrently with the sentences on counts 3 to 17. Their total effective is 45 years imprisonment.

Masimba Chibhunhe is sentenced to 3 years imprisonment on each of the 18 counts. The sentences on counts 1 and 2 shall run concurrently with counts 3 to 18. His total effective is 48 years imprisonment.

*Prosecutor General's Office, counsel for the state*