

THE STATE**Versus****MANDLA FUZANI**IN THE HIGH COURT OF ZIMBABWE
TAKUVA J
BULAWAYO 28 APRIL 2016**Review Judgment**

TAKUVA J: This matter came before me on automatic review. The accused appeared before a magistrate at Silobela facing two counts as follows:

Count 1: Assault as defined in section 89 of the Criminal Law Codification and Reform Act Chapter 9:23 (The Code).

Count 2: Robbery as defined in section 126 of the Code in that on the 16th day of December 2012 and at Mazhata Store, Hozhi Business Centre, the accused unlawfully and intentionally used violence or threats of immediate violence to Slim Sithole by assaulting him once on the back with an iron bar and took US\$ 1 219,00 the property of Slim Sithole and in the lawful control of Slim Sithole in order to induce him to relinquish control.

Although paragraph 7 of the state outline states that the value of property stolen is \$1 219,00 and nothing was recovered, the court a quo ordered restitution in the sum of US\$719,00. In fact the sentence is worded thus:

“Count 1: 12 months imprisonment
Count 2: 24 months imprisonment, in total accused is sentenced to 36 months imprisonment of which 4 months is suspended for 5 years on condition accused does not within that period commit any offence involving assault and or dishonesty as an element for which he is sentenced to imprisonment without the option of a fine. A further 4 months is suspended on condition accused restitutes complainant in count 2 the sum of US\$719,00 by the 28 February 2016. Effective sentence is 28 months” (my emphasis)

The conviction is proper and I hereby confirm it. However, I raised a query with the trial court in the following terms:

“The accused stole US\$1 219,00 from the complainant and nothing was recovered. Why did the court order restitution in the sum of US\$719,00? How did the court arrive at this figure as such information is missing from the record of proceedings?”

The magistrate responded as follows:

“... I respond as follows to the review minute dated 15 January 2016 which was received by me on the 24th of February 2016.

I concur that I made an error. I was supposed to order the accused person to retribute the complainant in the sum of \$1 219,00. This was an oversight on my part and in future I will be wary of such mistakes.”

That error renders the sentence incompetent. It is therefore set aside and substituted with the following:

Count 1: 12 months imprisonment

Count 2: 24 months imprisonment. Of the total of 36 months imprisonment, 4 months imprisonment is suspended for 5 years on condition accused does not within that period commit any offence involving violence on the person of another and or dishonesty as an element for which he is sentenced to imprisonment without the option of a fine. A further 8 months imprisonment is suspended on condition accused restitutes complainant in count 2 the sum of US\$1 219,00 by the 30th of June 2016. Effective sentence is 28 months imprisonment.

Moyo J agrees