

**THE STATE****Versus****MKHULULI DLODLO**IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J  
BULAWAYO 21 & 27 JULY 2017**Criminal Review**

**MAKONESE J:** The accused appeared before a senior magistrate at Tsholotsho facing 3 counts of unlawful entry and 3 counts of theft of an assortment of goods whose value was placed at R1 630. The accused was convicted on his own plea of guilty and was sentenced to a total of 9 years imprisonment of which 2 years was suspended for 5 years on the usual condition of future good conduct.

The accused was properly convicted and the evidence against him was unassailable. It is the sentence that I find extremely harsh and excessive in all the circumstances of the case. The brief facts of the matter are that on the 25<sup>th</sup> June 2017 the appellant went on a spree of housebreakings at Mavava Line Homestead at Tsholotsho. On three different occasions accused broke into premises and stole goods comprising takkies, money and cellphones worth a total value of R1 630. In his reasons for sentence the learned trial magistrate held that the accused was contrite and had pleaded guilty. He was a family man. The trial magistrate found that accused had a previous conviction. The operative suspended portion of the sentence was not brought into operation because it referred to dishonesty as an element and did not cover unlawful entry. The trial magistrate went on, however to indicate that the accused had shown an unrepentant attitude and disregard for the law. The approach taken by the court *a quo* was to “cluster” the offences for sentencing purposes. The resultant sentence was as follows:

“Count 1 and 2	-	3 years
Count 3 and 4	-	3 years
Count 5 and 6	-	6 years”

The total cumulative sentence of 9 years was thus imposed, with 2 years imprisonment being suspended for 5 years on the usual conditions of good behaviour.

The approach of the court *a quo* to the question of sentence resulted in an absurdity for a number of reasons. Firstly, the sentence is wholly inappropriate and excessive and induces a sense of shock. Secondly, the sentence is out of line with similar cases. Thirdly, the sentence of 9 years for unlawful entry and theft involving a meager value of R1 630 is extremely harsh and not justifiable on the facts. Fourthly, the court paid lip service to the mitigating feature of the case. The accused pleaded guilty to three offences he ought to have been treated as a first time offender because the previous conviction was not found to be relevant.

It is trite, that where an accused is convicted of two or more offences it is preferable that he should be sentenced separately for each offence, especially where the offences are entirely different. See *S v Chawasarira* 1991 (1) ZL 67 (HC)

In *S v Nkosi* 1965 (2) SA 414 ( C), it was pointed out that although in South Africa globular sentenced had in a number of cases received judicial approval, the practice in England was to enter up judgment and sentence separately on each count. The learned Judge stated at page 415-416 as follows:

“In the vast majority of cases no practical advantage results from imposing a globular sentence. A reasonable sentence can be determined by deciding upon a reasonable sentence for each offence and then by scaling down the sentences if the cumulative effect renders the total unreasonable ...”

In the instant case, the total cumulative sentence is evidently too harsh and excessive. The trial magistrate could still achieve a reasonable sentence by scaling down the sentence on each individual count. Having decided to group the counts for the purposes of sentence the sentence of 3 years imprisonment on each of the counts grouped as one for the purpose of sentence was clearly out of line with similar decided cases. The result was that an absurd sentence was arrived at which could not be justified on the facts and the law. The trial

magistrate misdirected himself in this approach to sentence. This court is thus at large regarding sentence. The sentence imposed in this matter ought to be interfered with.

In the result, the following order is made:

1. The conviction is upheld.
2. The sentence is set aside and substituted with the following:

“Count 1 and 2 - 12 months imprisonment  
Count 3 and 4 - 12 months imprisonment  
Count 5 and 6 - 12 months imprisonment

Of the total 36 months imprisonment 6 months imprisonment is suspended for 5 years on condition accused is not within that period convicted of an offence involving unlawful entry and theft and for which he is sentenced to a term of imprisonment without the option of a fine.”

Mathonsi J agrees .....