

KENNETH TOGARA  
and  
THE STATE

HIGH COURT OF ZIMBABWE HARARE  
Karwi J

25 September 2009

**CRIMINAL REVIEW**

KARWI J: Accused appeared before a magistrate in a maintenance court at Harare on 14 September 2009. During the court s sitting, the Accused committed acts of contempt of court. He was convicted thereof and sentenced to undergo 45 days of imprisonment. In terms of section 71[2] of the Magistrate s Court Act [Chapter 7:10], the magistrate referred the matter to this Court for review.

The facts which gave rise to the conviction were that upon being ordered by the magistrate to pay maintenance in the sum of \$400 per month for the maintenance of his children, he willfully committed certain acts of contempt of court. The record shows that during the court s sitting the Accused charged at the magistrate and shouted “Bullshit! There is no justice in this court” He went on to bang the magistrate s bench four times in a most threatening manner. He further shouted “You are paid to do your job. This is nonsense” He advanced towards the magistrate and tried to slap her but she evaded the blow. He then threw a bundle of papers at her face. He continued to shout on top of his voice disrupting business in the nearby courts .Police had to use force in order to effect an arrest as he was resisting. He left the courthouse still shouting unprintable words and vowed to deal with the magistrate.

Nothing turns on the conviction as it was proper. There is no doubt that the Accused committed a most serious act of contempt of court. Section 71 of the Magistrate s Court Act provides that

“(1) If any person, whether in custody or not—

(a) wilfully insults the magistrate during his sitting in court or any clerk or messenger or other officer of any court during his attendance therein; or

(b) wilfully interrupts the proceedings of or otherwise misbehaves in court; or

(c) being a witness, refuses to answer any legal question relative to the matter in issue;

it shall be lawful for any police officer or private person by order of the magistrate to take such offender into custody and detain him until the rising of the court, and the magistrate may by warrant under his hand impose on the offender a fine not exceeding level three or commit him to prison for a period not exceeding one month, or impose such a fine on him and commit him to prison for such a period.”

In this case the Accused did not only insult the magistrate and interrupt the court proceedings but went further to assault and threaten the magistrate. He showed open insolence to a judicial officer during her sitting. This is a highest form of contempt of court. The court was correct in convicting him of contempt of court.

The problem however is with the sentence the magistrate imposed. Section 71 [ ] [c] of the Magistrate s Court Act provides that the magistrate may by warrant under her hand impose on the offender a fine not exceeding level three or commit him to prison for such a period not exceeding one month. The Magistrate in the court a quo imposed a sentence of 45days in prison. The sentence imposed is certainly ultra vires the statutory provisions and cannot therefore stand.

The magistrate in the court a quo was however correct in imposing a prison term as punishment in this case because of the severity of the offence committed. Any other form of punishment would have an effect of seriously trivializing the offence. There is certainly a need to uphold the sanctity of judicial proceedings and the need to sanction the dignity of courts. In my view the willful actions of the Accused seriously undermined the administration of justice. There is need for deterrence. This is the reason why it would not be proper to impose the sentence of a fine of community sentence. This is so despite the fact the Act calls for either the imposition of a fine or imprisonment of not more than one month or both such fine and imprisonment.

In the result, the sentence of 45days imposed by the magistrate is set aside and is substituted by a term of imprisonment of 30days.

Karwi J.....

Uchena J.....I agree.