

THE STATE
versus
KEITH MAGIRAZI

HIGH COURT OF ZIMBABWE
CHATUKUTA J
HARARE, 17 June 2013

Criminal Review

CHATUKUTA J: The above matter was referred for review with the following comments:

“The record of proceedings was placed for review before the regional magistrate who noted that the trial magistrate had imposed two sentences which was said to be improper in the case of Chipwere HH 314-08.

The trial magistrate conceded that she had imposed two sentences.

May we be guided on the way forward?”

The accused was rightly convicted of contravening s 136 of the Criminal Law (Codification and Reform) Act [*Cap 9:23*]. The accused had misrepresented to the complainants that he was selling residential stands, when in fact the stands did not exist. The complainant suffered prejudice in the sum of \$6 000-00.

The accused was sentenced to pay a fine of \$200-00 in default of payment 3 months imprisonment. In addition he was sentenced to 8 months imprisonment of which 3 months was suspended on condition of good behavior and the remaining 5 months on condition of restitution. It is this sentence that the scrutinizing magistrate considered to be improper.

It appears it is proper to sentence an accused to a fine and in addition to a term of imprisonment which should be wholly suspended. Section 136 in terms of which the accused was convicted permits the imposition of a fine or a term of imprisonment or both.

The powers of a magistrate to impose both sentences is also provided for in s 50 of the Magistrates Court Act [*Cap 7:10*]. Section 50 (5) reads as follows:

“Subject to this act and any other enactment, a court may impose upon a person convicted of one offence a punishment of both a fine and imprisonment.”

The scrutinizing regional magistrate referred to the case of *S v Chipwere* HH 314-83 that it was not permissible to do so. However, *S v Chipwere* discussed the provisions of the Magistrates Court [*Cap 18*]. Section 54 (7) of that Act in fact is to a large extent worded in the same language as s 50 (5) of the present Magistrates Court Act. In *S v Chipwere* the trial magistrate had imposed two separate imprisonment terms. The sentence was as follows:

“... four months imprisonment with labour. In addition the four months imprisonment with labour which was suspended on the 5th November 1982 is hereby brought into effect.

In addition, one month’s imprisonment with labour is imposed on condition that you pay \$37-00 to the complainant in restitution.

That makes a total of nine months’ imprisonment with labour with one month suspended on condition that you, make restitution to the complainant.”

It is the two separate sentences, both being terms of imprisonment that the court found to be improper.

In *S v Msakasa* HH 302-83 cited in *S v Chipwere*, the court had imposed a fine of \$300-00 or in default of payment two months imprisonment in with labour. In addition to the fine, the court had imposed two separate terms of imprisonment. One month was suspended on condition of restitution. A separate two months was imposed and suspended on condition of good behavior. The court in *S v Msakasa* at p 1 observed as follows:

“In the present case, the magistrate has passed two separate sentences of imprisonment for the one count the accused was to be sentenced for and this is incompetent.”

In the result I am of the view that the trial magistrate did not err in this regard. However, the sentence appears to be manifestly too lenient so as to induce a sense of shock if not a mockery of justice.

The accused defrauded a desperate home seeker of \$6 000-00 only to be sentenced to pay a fine of \$200-00 plus a wholly suspended prison term.

Offences of this nature are prevalent and on the increase. The courts have a duty to protect society from offences of this nature and to deter would be offenders and other like-minded persons by passing stiff and deterrent sentences.

For these reasons I am inclined to withhold my certificate.

Attorney General's Office, for the State