

SAM MUSONDA
versus
THE STATE

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE 30 September 2013 and 22 October 2013

Bail Application

Mr. Hofisi, for the applicant
Mr. Makoto, for the respondent

BHUNU J: The accused was convicted on his own plea of guilty on a charge of theft as defined in s 113 Of the Criminal Law (Codification and Reform) Act [*Cap 9:23*] He was sentenced to 36 months imprisonment of which 6 months imprisonment was suspended on appropriate conditions of good behaviour. Of the remaining 30 months imprisonment 6 months were suspended on condition of restitution to the complainant in the sum of US\$265.00. He now applies for bail pending appeal against sentence only.

The applicant is not new to the Courts. He committed the offence in the face of a relevant previous conviction carrying a 6 months suspended prison term compounded with community service In the current case he stole his cousin's cloths from a wash line. The property is valued at US\$300.00 of which property valued at US\$35.00 was recovered.

Considering that the accused is a repeat offender who stole from a relative thereby betraying his trust, the sentence meted on him while severe does not certainly induce a sense of shock as it is within the range of sentences for such offenders. Even in the unlikely event that the appeal court interferes with the sentence it is unlikely that it would go as far as imposing a wholly non custodial sentence.

While the complainant's attitude towards sentence is an important factor to take into account in assessing sentence, it is not an overriding consideration. It is only one of the factors to take into account in assessing sentence. Thus the trial magistrate was well within his rights in sentencing the applicant to an effective term of imprisonment notwithstanding the complainant's attitude to the contrary. This is because the aggravating circumstances by far outweighed the mitigating features. The applicant stole from a relative in open defiance of

the 6 months imprisonment hanging over his head. His conduct in this respect amounts to an open betrayal of the courts' bid to reform him.

Previous none custodial sentence in the form of community service having failed to reform him, the trial magistrate can hardly be faulted for coming hard on the applicant. In the result I come to the conclusion that the applicant's prospects of success on appeal are pretty dim indeed. I therefore cannot perceive any misdirection on the part of the trial magistrate in denying the applicant bail pending appeal. It is accordingly ordered that the appeal be and is hereby dismissed.

V Nyemba & Associates, the applicant's legal practitioners

The Prosecutor General's Office, the respondent's legal practitioners