

THE STATE
versus
SHEPHERD GONESE

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 13 March 2014

Criminal Review

BHUNU J: This matter was referred to me for review with the following comments from the scrutinising Regional Magistrate:

“The accused person was charged and convicted of Contravening Section 33(1) (a) as read with section 46 of Statutory Instrument 32 of 2007. The charge sheet does not have the full citation but when I checked the statutory instrument, the full citation is ‘Housing and Building Act (Rent Regulations Statutory Instrument 32 of 2007’

The purpose of the statutory instrument is to protect lodgers from exploitation by landlords and it does not cover the present scenario.

The accused simply assisted the complainant’s wife to take away property, therefore there was no landlord/tenant relationship and for that reason no offence was committed.”

The undisputed facts are that following purely domestic problems the accused assisted the complainant’s wife to remove property from the matrimonial home in her bid to desert her husband. There was therefore no landlord tenant relationship between the complainant and any of the people who removed property from his home.

Section 33 (1) (a) Of the Rent Regulations SI 32/07 under which the accused was charged provides as follows:

“33. *Illegal removal of property by lessor or obstruction in use and disconnection of water and electricity of dwelling*

(1) If a lessor—

(a) without a lessee’s consent, causes the removal from a dwelling of any property belonging to the lessee;

or

(b) prevents a lessee from using or occupying a dwelling; or

(c) disconnects water or electricity; and the lessor has not obtained an order of court for the removal of such property if appropriate, or for the recovery of possession of the dwelling or for the disconnection of water or electricity; or for the ejection of the lessee there from, the lessor shall be guilty of an offence.

(2) A court convicting a lessor for contravening subsection (1) may, in addition to the imposition of a penalty authorised by section 46—“

By specifically mentioning the lessor to the exclusion of anyone else the law maker was making it clear that the offence can only be committed by a lessor who removes property from the rented premises without the lessee's consent.

By removing property from the matrimonial home the wife was not committing any offence under *the Rent Regulations*. *That being the case, the accused could not possibly have* been guilty of committing any offence by association as a *socio criminis* because the conduct complained of did **not** amount to a criminal offence. The Latin maxim *expressio unius est exclusio alterius*, that is to say the express mention of one thing excludes that which is not mentioned applies.

The trial magistrate therefore, grossly misdirected himself in convicting and sentencing the accused to 5 months imprisonment of which 2 months imprisonment was suspended for a period of 5 years on the usual conditions of good behaviour.

It is for the foregoing reasons that on 27 February 2014 that I issued a warrant of liberation for the accused with reasons to follow.

It is accordingly ordered that the conviction and sentence be and is hereby quashed and set aside.

BHUNU J

CHIWESHE JP Agrees