

JEALOUS MAKOMBE
versus
THE STATE

HIGH COURT OF ZIMBABWE
BERE J
HARARE, 19 January 2015

Criminal Review

BERE J: This record has been placed before me for review.

The brief facts are that the appellant was charged and convicted of having assaulted his wife by striking her on the mouth with open hands in violation of s 4(1) (a) of the Domestic Violence Act [*Cap 5:16*].

The accused was then sentenced to pay a fine of US\$300-00 or in default of payment to undergo 8 months imprisonment. In addition, 8 months the whole of which was suspended on conditions was imposed.

There is no issue with the conviction but I am worried with the first part of the accused's sentence. The accused was *inter alia* sentenced to pay a fine of US\$300-00 or in default of payment to undergo 8 months imprisonment. Therein lies the problem.

I am worried by the apparent disproportion between the fine imposed and the alternative period of imprisonment which the accused must be subjected to undergo in the event of him failing to raise the imposed fine.

There is no relationship between the fine imposed and the alternative 8 months imprisonment. The 8 months appear to be clear guess work and that is not how the alternative period of incarceration should be computed.

The best approach to deal with the computation of the alternative period of incarceration is to seek guidance from the convicted person as to how long it is likely to take him to raise the fine imposed. This involves among other issues canvassing such issues like the source of income if not formally employed or the monthly earnings if the convicted person is employed.

It is only when such information has been sufficiently gathered that the court is then

able to use its wide discretion in imposing the alternative period of imprisonment. It cannot be any number of months granted in the air as is apparent in this case.

For these reasons I withhold my certificate in this matter as I am convinced the approach adopted does not accord with real and substantial justice.

The first part of the sentence is set aside and substituted by the following one.

“US\$300-00 or in default of payment 2 months imprisonment.”

MUSAKWAJ agrees:.....