

STATE
versus
WIRIDZANAI KAMUTASHURA

HIGH COURT OF ZIMBABWE
MTSHIYA J
HARARE, 6 November 2015

Sentence

Ms F C Murenda, for the state
Defence in person

MTSHIYA J: On 4 November 2014 the accused was, on his own plea, convicted of the offence of “Having Extra Marital Sexual Intercourse” with a young person, as defined in law.

The conviction was proper and I hereby confirm it.

Upon conviction of the accused the proceedings were stopped and the case was referred to the Attorney General for guidance in sentencing. This was prompted by the fact that upon being convicted of the offence mentioned above, the accused was found to be HIV positive. The trial magistrate had no jurisdiction to impose a sentence beyond the mandatory minimum sentence of 10 years. The case was then referred to this court by the Attorney General for sentencing and hence these proceedings.

The accused who is now 44 years of age committed the offence with a person who looked to him as a parent. Him being HIV positive puts the life of the young person in danger. I have noted that, apart from what he said in mitigation in the lower court, the accused has nothing further to say in mitigation. He is a first offender.

I have also noted that, he has nothing to say with respect to the issue of special circumstances. I therefore find no special circumstances militating against the imposition of the mandatory minimum sentence of 10 years.

The accused committed a very serious offence which calls for a heavy sentence. A heavy sentence which removes him from the general public may probably discipline him. Accordingly he is sentenced to:

-15 years imprisonment of which 5 years imprisonment is suspended for 5 years on condition that during that period he does not commit any offence involving sexual assault for which if convicted he is sentenced to imprisonment without the option of a fine.

Attorney General's Office, State's legal practitioners