

THE STATE
versus
TAPIWA MAMVURA

HIGH COURT OF ZIMBABWE
TSANGA & CHITAPI JJ
HARARE, 15 January 2016

Criminal Review

TSANGA J: For contravening s 113 of the Criminal Code (Codification and Reform) Act [*Chapter 9:23*] on theft, the accused was convicted and sentenced to a fine of \$150.00 and in default 30 days imprisonment. In addition, another 30 days imprisonment was suspended for three years on the usual conditions. The facts upon which the accused was found guilty were that he had snatched a bag from complainant containing \$100. 00. Both had been recovered.

The Acting Regional magistrate wrote to the trial magistrate in relation to the sentence with the following query.

“Was it competent for the court to sentence accused to pay a fine of \$150.00 considering the value of the stolen property ie \$100.00 and the requisite penalty provisions i.e. section 113 (1) (b) of the Criminal Code (Codification and Reform) Act.

See also the attached High Court Judgments in this matter.”

The judgments referred to were the *State v Thomas Benhura* HH 528 /15 and a Review Minute written on 27 July in the case of the *State v Moses Sithole* CRB 79/15.

The trial magistrate having read the judgment and review minute responded to the effect that he conceded that:

“...while the court has berth to impose imprisonment up to 25 years, in imposing a fine it is for one not exceeding level fourteen or twice the value of the stolen property, that is, what is greater between the two” (sic)

The Acting Regional Magistrate then sent the record for review with the following observations:

“The trial court sentenced accused to fine of \$150.00/ 30 days imprisonment on a charge of contravening section 113 of the Criminal Code (Codification and Reform) Act [*Chapter 9:23*] (Theft). The property he had allegedly stolen is valued at \$100.00.

My interpretation of the requisite penal provision ie section 113 (1) (b) (1) is that the appropriate fine should have been at least twice the value of the stolen property, though not exceeding level 14.

I am of the conviction therefore that the fine of \$150.00 the Court imposed was incompetent, being below twice the value of the property stolen ie \$200.00 and level 14”.

To unpack the meaning of the provision in question, it is necessary to regurgitate its wording in full. Section 113 is formulated as follows:

- “(1) Any person who takes property capable of being stolen –
- (a) Knowing that another person is entitled to own, possesses or control the property or realising that there is a real risk or possibility that another person may be so entitled : and
 - (b) Intending to deprive the other person permanently of his or her ownership , possession or control, or realising that there is a real risk or possibility that he or she may so deprive the other person of his or her ownership possession or control :

Shall be guilty of theft and liable to either of the following-

- i) A fine not exceeding level fourteen or twice the value of the stolen property, whichever is the greater
- ii) Imprisonment for a period not exceeding twenty –five years”.

The use of the word “or” is disjunctive, which means that the trial court can competently impose a fine which is between level one and fourteen. If it does so, this would be competent. The second part referring to twice the value of the stolen property, is in fact an alternative method of assessing a fine, which method gives the trial court the leeway to impose a fine which is greater than the level fourteen fine where warranted.

A level fourteen fine is \$5000.00 whilst a level one fine starts at \$5.00. In between the two levels are the various ranges of fines which can be imposed. Simply put, the significant point to grasp is that the fines set out per level as per the scale of fines are maximum fines permissible and not the minimum fines. It is a grossly erroneous reading of the s 113 (b) to suggest that its import is that in every case of theft the fine should be double that of the property stolen. In other words, where the facts do not call for a maximum penalty, the fine that the magistrate can choose to impose could be anything starting from level one which is \$5.00 to a maximum of level fourteen which is \$5000 or twice the value of the property. A maximum fine should not exceed this threshold.

The issue of a maximum fine ie \$5000.00 which is level 14 or twice the value of the property only comes in where a magistrate deems that the matter is so serious as to merit punishment by way of a fine at the highest permissible level. The guideline regarding the fine

payable in such a seriously deserving case is that the fine should not exceed \$5000.00 or twice the value of the stolen property whichever is greater.

An example will help to clarify this meaning. X for instance steals property worth \$2600. 00. The magistrate trying him comes to the conclusion that the overall facts of the case warrant the imposition of a maximum fine permissible as opposed to any prison term for whatever reasons he or she will have (hopefully) fully articulated. Using the guideline in s 113 (b) a level fourteen fine would be \$5000.00 whereas the value of twice the property would be \$5 200. Twice the value of the property is greater than the level fourteen fine so it is the \$5 200.00 which would be the imposable fine under the circumstances where it is desired to impose a maximum fine.

Turning to the facts of this particular case where the magistrate imposed a fine of \$100.00, this was perfectly in order. The fine is a level four fine which is well within the range of permissible scales that can be considered by a magistrate in a crime of theft. This is anything from \$5.00 up to \$5000.00. The offender was a youthful offender aged 18. It was the view of the magistrate that the fine was appropriate taking into account the circumstances of the case. There is nothing at all in the wording of the penalty section to s 113 (b) that would suggest that only a fine of twice the value of the property is the minimum to be imposed in such a case.

The trial magistrate's sentence was correct and is accordingly confirmed.

TSANGA J:.....

CHITAPI J agrees.....