

THE STATE  
versus  
EMMANUEL SINGO

HIGH COURT OF ZIMBABWE  
HUNGWE J  
HARARE, 31 May 2017

### **Criminal Review**

HUNGWE J: The accused was convicted of theft after a trial and was sentenced as follows:

“18 months imprisonment of which 4 months imprisonment is suspended for five years on condition the accused does not during that period commit any offence involving dishonesty for which he is sentenced to imprisonment without the option of a fine.

Of the remaining 14 months imprisonment 7 months imprisonment is suspended on condition the accused makes restitution in the sum of US\$5 000-00 through the Clerk of Court, Harare, on or before 30 December 2014.

The remaining 7 months imprisonment was suspended on condition accused completed 245 hours of community service at Braeside police Station on the following conditions;

- (a) Community Service starts on 8 November 2014 and must be completed within 8 weeks of that date.
- (b) Community Service shall be performed between the hours of 8am – 1pm and 2pm – 4pm on Saturdays and Sundays which are not public holidays and to the satisfaction of the person in charge of that institution who the court has granted the authority to grant the accused leave of absence on a particular day (s) or during certain hours for good cause shown.
- (c) Any such leave shall not count as part of community service performed.”

On 9 June 2016 the magistrate addressed correspondence to the Registrar of this Court in the following terms:

**RE: S v EMMANUEL SINGO : CRB NO. HRE P6346/14**

The above matter refers.

May you please place the above record of proceedings before the Honourable judge with the following comments.

- “1. On 5 November 2014, the Accused was sentenced to perform 245 hours of community service by my brother Magistrate.
2. He performed a total of 126 hours and whilst performing the community service, he was involved in a road accident wherein he sustained multiple fractures on the legs.
3. I have deferred the completion of the community service three (3) times now since 14 August 2015.

I have realised that Accused is now disabled and cannot work. Therefore, he can no longer perform the community service as ordered.

4. I have looked at all the provisions on section 358 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] and I have not found any which is relevant to this situation.
5. I therefore seek guidance.”

The magistrate has forwarded the record of proceedings in terms of s 29 of the High Court Act [*Chapter 7:06*]. A perusal of s 358 of the Criminal Procedure and Evidence Act, [*Chapter 9:07*] confirms what the magistrate stated above.

The position in this matter in short is that the accused is unable, by virtue of having suffered debilitating injuries in a road traffic accident, to complete the remaining 119 hours of community service. The record of proceedings demonstrate that indeed the accused sustained fractures to the legs rendering him immobile for now. It is not clear whether the present disability is permanent or not but for the present purpose, it is not necessary to determine the issue. Clearly, it is undesirable for the sentence to remain pending or in limbo as presently is the case.

The desirability of modifying the sentence is obvious in this situation. The accused has served 3.6 months of the 7 months of community service. The balance of 3.4 months remain to be dealt with by this court.

In my view this court, in the exercise of its review powers in terms of s 29 (c) may make such an order as it thinks fit. I have not taken the liberty to invite the views of the Prosecutor – General in light of the fact that the reason why the magistrate acted under s 29 (c) is that the accused has filed a notice of appeal and therefore the question whether the conviction is proper or not is still subject of an appeal. I must assume the correctness of the conviction as that is not before me presently.

In light of the above an appropriate way to deal with the accused's predicament is to alter the portion suspended on condition of his performing community service without affecting the sentence previously settled on by the sentencing court. This can be done by configuring the sentence as follows:

"18 month imprisonment of which 8 months imprisonment is suspended for five years on condition the accused does not during that period commit any offence involving dishonesty for which he is sentenced to imprisonment without the option of a fine.

Of the remaining 10 months imprisonment, 7 months is suspended on condition the accused makes restitution in the sum of US\$5 000-00 through the Clerk of Court, Harare on or before 30 December 2014;

The remaining 3 months is suspended on condition the accused completes 126 hours of community service at Avondale Police Station on the aforesaid conditions."

In light of the fact that the accused has already performed the 126 hours of community service, the accused does not need to perform much community service.

The Clerk of Court, Harare is directed as follows:

- (a) establish whether or not the accused has complied with the condition in respect of restitution;
- (b) whether or not the appeal is ready for set down and, through the Registrar of this court, of the stage of the appeal.

CHIWESHE JP: agrees:.....