

THE STATE  
versus  
PAIDAMOYO GADZAMBO

HIGH COURT OF ZIMBABWE  
MUZOFA J  
HARARE, 7 December 2018

### **Review Judgment**

MUZOFA J: This matter was placed before me for review. The trial Magistrate in the covering note indicated that he made an error in sentencing the accused, he exceeded the sentence provided for in the statute.

The accused and the complainant were married and later divorced. During the subsistence of the marriage the couple was blessed with children. On separation the complainant was given custody of the children. It seems the accused then abrogated all the care and maintenance of the children to the complainant. In these hard times the complainant eventually felt the heavy weight of responsibility over the children without the accused person's support. The complainant eventually applied for maintenance at Mt Darwin Magistrate Court. The accused was not amused by the claim made by the complainant for maintenance. On 29 September 2018 the accused, armed with an axe and a spear went to the complainant's house and threatened to kill her. Complainant escaped and locked herself in her house. For this conduct the accused was arrested and charged with contravening section 186 as read with section 47 of the Criminal Law Codification and Reform Act [*Chapter 9:23*] "the code" for making a threat. The accused appeared before the magistrate and he pleaded guilty. There are no issues arising from the conviction.

However before I relate to the sentence, I want to address the charge preferred against the accused. The State Outline indicated that the accused and the complainant were married but divorced. The Domestic Violence Act [*Chapter 5:16*] "the Act" is the Act promulgated to specifically deal with issues relating to these relationships. The interpretation of s 2 thereof defines a complainant as "in relation to a respondent, as:-

(a) a current, former or estranged spouse of the respondent: or

....."

The accused and the complainant's relationship fit in this definition.

The accused's conduct is regulated in section 3 (1) (a) as read with subsection 2 (a) of the same section. In terms of section 4 of the Act a person found guilty of an act of domestic violence is liable to a fine not exceeding level fourteen or imprisonment for a period not exceeding ten years or both to such fine or such imprisonment. The primary objective of the Act is to protect spouses especially women who are in danger from their spouses current or estranged, given that such harmful violent behavior may escalate and might ultimately pose a threat to life. As a result deterrent sentences are provided for in the Act to curb such conduct. The preamble is clear on the objective of the Act, it is to:-

“To make provision for the protection and relief of victims of domestic violence and to provide for matters connected with or incidental to the foregoing”

In this case categorizing the threats under the code has the effect of disguising the nature of the offence. The accused has a responsibility to take care of his progeny; he cannot be allowed to be irresponsible to the extent of being angered by a reminder to be responsible. It's really a shame. Clearly the charge should have been under the Domestic Violence Act. The State is *dominus litis* and therefore has the prerogative to charge the accused as it sees appropriate, the Court's hands remain tied on this aspect. However it is for the State to make sure that vulnerable members of society are adequately protected by the law enacted to give them such protection.

That as it maybe, having entered the plea of guilty the magistrate sentenced the accused to 10 months imprisonment of which 4 months imprisonment were suspended for 5 years on condition of good behavior. The remaining 6 months imprisonment were suspended on condition the accused completed 210 hours of community service. The accused was charged under section 186 of the code which provides for a maximum sentence of a fine not exceeding level five or imprisonment for a period not exceeding six months or both. Clearly the magistrate exceeded the sentence provided in the statute. The error has been conceded. The sentence therefore has to be aligned with the section under which the accused was charged.

In that regard, since the accused has an effective sentence of 6 months which is the maximum sentence provided in the code, I see no reason to interfere considering that there was a real threat of harm, the sentence of 6 months is appropriate in the circumstances. Accordingly the sentence is alternated as follows:-

1. The conviction is hereby confirmed.
2. The sentence imposed by the magistrate is hereby set aside and substituted by the following:-

“6 months imprisonment wholly suspended on condition accused completes 210 hours of community service”.

MUSAKWA J agrees:.....