

THE STATE  
versus  
KUDAKWASHE CHIRARA

HIGH COURT OF ZIMBABWE  
MUZENDA J  
MUTARE, 15 March 2019

### **Criminal Review**

MUZENDA J: The accused was convicted of seven counts of armed robbery, one count of unlawful entry into premises and one count of contravening s 24 of the Immigration Act [Chapter 4:02]. He was sentenced to a total of 56 years imprisonment, 6 years were suspended on the usual conditions of good behaviour, a further 10 years' imprisonment were suspended on condition of restitution; for the conviction for contravening s 24 of the Immigration Act, accused was sentenced to a fine of \$200-00 in default of payment 4 months' imprisonment.

The convictions on all the nine counts are confirmed. The sentence on count 9 is confirmed. The regional Magistrate distinguished sentences in counts 1-5, 7 and 8, all robbery offences based on the value of the property stolen. For count 1 where property stolen was valued at \$2 600-00, accused was sentenced to 9 years' imprisonment, for count 2 (value \$1 200-00) accused was sentenced to 6 years, for count 3 value \$640-00 accused was sentenced to 5 years, count 4 value \$50-00 accused was sentenced to 5 years, for count 5 value \$13 600-00 accused was sentenced to 10 years, count 7 value \$2 650-00 accused was sentenced to 9 years, for count 8 value was \$1 400-00 accused was sentenced to 6 years.

The learned Regional Magistrate in her reasons for sentence correctly alluded to inflation in Zimbabwe which has been galloping almost daily affecting the real value of properties. Such aspect ought to have also been reflected in the formulation of sentences especially for offences of a similar nature. The regional Magistrate had a wide discretion on choosing the appropriate sentence but she should have also employed the doctrine of uniformity. As enunciated correctly by GREENLAND J in *S v Madondo* 1989 (1) ZLR 300 (H) an appropriate sentence involving robbery (whether armed or not) should be in the region of 6 years partly suspended.

For counts 1-5, 7-8 I would pass a sentence of 5 years for each count to make a total 35 years. There is no basis to distinguish the values involved in my view and where a number of counts are involved committed by one offender, dictates of parity and uniformity would demand such an approach to such matters. For count 6, I will set aside the Regional Magistrate's sentence of 6 years and substitute it with 5 years' imprisonment. Of the total of 40 years' imprisonment 10 years' imprisonment are suspended on condition of future good behaviour. Another 10 years are suspended on condition of restitution as properly outlined by the learned trial Regional Magistrate.

Total effective sentence: 20 years

Accordingly, the sentence of the Regional Magistrate is set aside and substituted as follows:

1. Counts 1-5 and 7-8: 5 years' imprisonment for each of the 7 counts. Total 35 years.  
Count 6: 5 years' imprisonment.
2. Of the total of 40 years, 10 years' imprisonment is suspended for 5 years on condition during that period accused does not commit any offence of which dishonesty is an element for which he is sentenced to imprisonment without the option of a fine.
3. Another 10 years' imprisonment is suspended on condition of restitution.

MWAYERA J agrees \_\_\_\_\_