THE STATE

Versus

DERRECK ZUVA

IN THE HIGH COURT OF ZIMBABWE
MUTEMA J
BULAWAYO,3 & 6 FEBRUARY,2014

Criminal Review

MUTEMA J: The conduct by the trial provincial magistrate in the instant case is one *sui generis*. She convicted the accused person on the 8th May, 2013 of contravening section 186 (1) of the Criminal Law (Codification and Reform) Act [Chapter 9:23], *viz* threatening to kill his father. This was following a plea of guilty. She sentenced the accused to 24 months imprisonment of which 6 months imprisonment was suspended for 5 years on condition of good behaviour while the balance of 18 months was suspended on condition accused completed 630 hours of community service at Chikwingwizha Seminary School.

I raised a query with the trial magistrate whether she ever bothered to acquaint herself with the maximum period of imprisonment for the offence in question. The response I got reads as follows:

> "My sincere apologies for the anomaly and I undertake in future to regard this as unacceptable and therefore not to repeat it. I have however rectified the anomaly and may corrective measures be taken to rectify the anomaly. The correct sentence should not exceed 6 months or fine not exceeding level 5."

I was, naturally constrained to write back to the trial magistrate to reverse what she had done as I was disabled from further reviewing the matter. I wrote to as follows:

> "… The trial magistrate's conduct *in casu* is fraught with serious irregularities bordering on misconduct. As things stand I can no longer recall off hand what sentence was imposed in the first place since the trial magistrate, in her perceived wisdom, has arrogated to herself review powers and altered her offending sentence to conform with the statutory limit. In so doing she has removed the annexure B on which the wrong sentence was written as well as the initial review case cover and substituted both with new ones written the corrected sentence.
>
> This is wholly unprecedented and unacceptable. It is only a High Court Judge who is imbued with review powers to alter/correct a sentence by an inferior tribunal. A trial magistrate is not clothed with such powers.

> As things stand I am unable to carry out the review process to its logical conclusion. In order to do that, the trial magistrate is directed to bind back the erroneous pages that she removed and re-submit the record of proceedings to this court."

She so did with this covering minute:

> "… I sincerely apologise for the misdirection and I have attached the annexure B that had been removed and resubmitted the record for review. I undertake in future not to repeat this anomaly. Grateful for your guidance."

The original review case cover was written the sentence of 24 months imprisonment of which 6 months was suspended for 5 years on condition of good behaviour while the balance of 18 months was suspended on condition accused completed 630 hours of community service. Annexure B – the placement of the offender on community service – also bore the same sentence. The date on both documents was 9 May, 2013. Following my initial query, on checking the statute and realizing that she had overshot the maximum sentence permissible, the trial magistrate had then plucked out the two documents alluded to *supra* and substituted them with two respective ones bearing the sentence of 6 months imprisonment wholly suspended on condition accused completed 210 hours of community service at the same institute commencing at the same date of 9 May, 2013 but the new date stamp was the date of amendment of the sentence, *viz* 04 September, 2013. Originally the community service was stipulated to be completed within 18 weeks but in the amended sentence it was scheduled to be completed within 6 weeks. But by the 4th September, 2013 when the sentence was self amended accused had gone 15 ½ weeks with the community service. The record is silent on whether the trial magistrate advised both the accused and the relevant institution, not to mention the prosecution, about this new sentence of hers.

By now the accused has already finished both sets of sentences in terms of performing the community service. The prejudice wrought to him cannot now be undone all because of a trial provincial magistrate – a fairly senior grade in the magisterial hierarchy – who shockingly purported not to know that a review query is not a licence to correct her mistake (s) but to simply respond to it as requested so that corrective measures, if any, could be taken by the reviewing authority.

I am constrained once again to advert to the exhortation Judges have often sounded to trial magistrate to please apply their mind to their work meticulously and with the utmost of diligence. Whilst it is acknowledged that erring is an accepted and inevitable human shortcoming, in discharging judicial work it must be the exception instead of the norm. A bad decision can have far reaching and debilitating consequences to another human being's life, liberty or general affairs.

We cannot, as judicial officers, afford to discharge judicial duties on the premise of work as usual. To adopt that mentality would mean that we are in the wrong profession.

It behoves me to only declare that these proceedings are a far cry from being

categorized as being in accordance with real and substantial justice. Accordingly I withhold my certificate.

The Registrar of this court is directed to bring the Chief Magistrate's attention to these proceedings.