SAMUEL CHINHOVO
versus
THE STATE

HIGH COURT OF ZIMBABWE
CHATUKUTA & TAGU JJ
HARARE, 9 June 2014 and 14 November 2014

Criminal Appeal

T. Muchineripi, for appellant
E. Mavuto, for respondent

TAGU J: This is an appeal against sentence imposed by the magistrate court at Kariba on the 20th September 2013. The appellant was, on his own plea of guilty, convicted on a charge of contravening s 4 (1) of the Domestic Violence Act [*Cap 5:16*]. He was sentenced to 36 months imprisonment of which 6 months were suspended on the usual conditions of good behaviour.

On the 9th of June 2014 we considered written and oral submissions by both counsels for the appellant and the respondent and delivered an *ex-tempore* judgment wherein we dismissed the appeal. We have now been asked to furnish full written reasons for purposes of appeal. These are they.

The appellant is a husband to the complainant. On the 14th May 2013 the complainant woke- up at 0500 hours to go to Chirundu for work. The appellant, who is employed at Marongola Parks, Makuti, as a ranger, escorted the complainant in a Colt Mitsubishi car to the bus stop. When they got at the bus stop at Tsetse Gate at around 0530 hours, the two had a misunderstanding over bus fare. The appellant turned violent, made a U-turn and ordered the complainant to alight from the motor vehicle. The complainant requested for enough bus fare so that she could get into a lift to Chirundu but the appellant did not listen. The appellant then opened the door to the complainant's seat and pulled her outside the car resulting in her falling to the ground on her back, thereby sustaining injuries. The complainant, fearing to be

left alone in the game park, rose-up and crawled back into the car. The appellant held her leg and pulled her out of the car for the second time resulting in her falling on the motor vehicle's door step with her hip and onto the ground again on her back. She sustained hip injuries.

The complainant crawled back into the car and the appellant drove with her towards their home. On the way the appellant slapped her several times on the cheek with the back of his hand. The appellant's work mate and his nephew discovered that the complainant was limping and was badly injured when she finally went home. The following day complainant was coughing out blood and felt great pain in her hip and back. She went to Hospital where she was told that she had sustained "Disc degeneration at LS /SI of the lumber spine, mild posterior disc herniation with compression of left nerve root at LS / SI" a dislocation of the hip bone and internal chest injuries.

The above injuries were confirmed by the medical report filed of record.

For such a serious and brutal attack on a defenceless woman, the appellant, through his defence counsel Mr *T. Muchineripi* prayed that he should have been sentenced to a heavy fine, or a heavy fine coupled with a wholly suspended sentence in the region of 6 to 9 months, or 18 months imprisonment with 9 months suspended on condition of good behaviour, and the remainder on condition of community service.

Mr *E .Mavuto* for the respondent supported the sentence imposed by the court *a quo*. His reasons were that the sentence imposed by the court *a quo* did not induce a sense of shock. Secondly, he submitted that the learned magistrate, exercised his sentencing discretion judiciously. He referred to the case of *S* v *Ramushu* SC 25/93 where it was held that an appeal court can only interfere with a sentence of a trial court if the discretion was not judiciously exercised, that is to say unless the sentence is vitiated by irregularity or misdirection or is so severe that no reasonable court could have imposed it.

Mr *Mavuto* further referred to the penalty provision of the Domestic Violence Act which provides for a level 14 fine which is the highest level in terms of the First Schedule to the Code of the (Standard Scale of Fines), or imprisonment not exceeding 10 years or to both such fine and imprisonment. He further argued that the Domestic Violence Act was enacted in order to protect and relieve victims of domestic violence like the complainant.

Mr *Muchineripi* reiterated the principles that are taken into account when assessing an appropriate sentence. He cited several case authorities. However, most of the cases cited by

Mr *Muchineripi* are very old cases which were passed before the coming into operation of the Domestic Violence Act which came into operation in 2006.

In his reasons for sentence the trial magistrate relied on a recent case of *S* v *Muchekayawa* HB 42/12 (2012 (1) ZLR 272) by JUSTICE MAKONESE where it was said-

> "Cases of Domestic Violence are on the increase and in some instances death has resulted. Unless sufficient deterrent sentences are imposed by courts as provided for under the Domestic Violence Act [*Cap 5:16*] the whole purpose of this piece of legislation will never be realised. Men will continue to brutalise their wives and equally so, some men will continue to be subjected to physical abuse by their spouses in the knowledge that they will go to court and pay a small fine. Whilst each case should be decided on its own merits, in serious cases custodial sentences are appropriate."

In his reasons for sentence the trial magistrate properly noted that this was a serious and vicious attack, or form of Domestic Violence. A fine or community service would trivialise an otherwise serious offence. He said the following sentiments which I agree with:-

> "In the matter which is before this court, the assault was sustained and vicious. Accused pushed the complainant out of the vehicle not only once but twice. The complainant dangerously landed on the ground. As if that was not enough, accused relentlessly attacked the complainant with open hands whilst he was driving the vehicle. He subjected the life of the complainant to danger and those of other road users. The behaviour of the accused is highly deplorable. His moral blameworthiness is very high. The Doctor concluded that the complainant was seriously injured and there is a possibility of permanent injuries. The complainant was seriously injured on the spinal cord. When she appeared before the court she was in crutches. She could hardly walk……A fine trivialises the offence. In my view a sentence in excess of 24 months is called for. Community service is therefore out of question." See also *S* v *Christopher Sikhosana* HB 195/12.

In casu, there was no misdirection committed by the lower court at all. The magistrate properly exercised his discretion. The sentence does not induce a sense of shock. It is high time that those who commit offences of domestic violence be visited with very harsh sentences. The legislature in its wisdom,saw it fit to enact this piece of legislation because of the prevalence and seriousness of the offence.

It was for these reasons that we dismissed the appeal.

CHATUKUTA J agrees……

Muchineripi and Associates, appellant's legal practitioners
Prosecutor- General's Office, respondent's legal practitioners