

THE STATE
versus
DALITSO DZUNGU +1
and
GILDO DASILVA ALMEIDA +1

CRB KOT 37 – 38/25

CRB KOT 16 – 17/25

HIGH COURT OF ZIMBABWE
MAXWELL J
HARARE; 13 March, 2025

Criminal Review

MAXWELL J:

The record of this matter was referred to me with a note from the scrutinising Magistrate to the following effect;

“The two records were dealt with by a Magistrate at Kotwa Magistrates Court and were submitted for scrutiny.

The accused persons were convicted of their plea of guilty on a charge of Contravening Sec 29(1) of the Immigration Act [*Chapter 4:02*] that is “Being an alien unlawfully enter, be or remain in Zimbabwe without a permit.”

No issues arise from the conviction but however it is the wording of the sentence I found to be improper. Firstly a globular sentence was imposed on the accused persons. Secondly the sentence appears to be incomplete.

In my view the sentence was supposed to be couched as:

“Each accused: 5 months imprisonment wholly suspended for 3 years on condition accused does not within that period commit any offence involving entering, being or remaining in Zimbabwe without a permit for which he is sentenced to imprisonment without the option of a fine.”

A look at the record of proceedings emphasises the need for the trial Magistrate to pay attention to detail before signing the scrutiny case cover. The sentence imposed by the trial Magistrate was couched on the Review Cover as follows;

“5 months imprisonment which is wholly suspended for 3 years on condition the accused persons does (sic) not within that period commit any offence involving unlawful entering or remaining in Zimbabwe without permits. In addition accused to be deported in terms of the Immigration Act.”

If attention had been paid to detail, the first issue raised by the scrutinising Magistrate would have been addressed. The handwritten record shows that the sentence had not been imposed globally. The word “each” appears before the sentence was written. The word each was however omitted on the typed record.

Be that as it may I agree with the observation by the scrutinising Magistrate that the sentence was incomplete. It is the usual practice for convicted persons to have a portion of or the whole of the sentence imposed on them to be suspended on condition they are not convicted of a similar offence for which they are sentenced to imprisonment without the option of a fine.

The conviction is confirmed and consequently the sentence imposed by the trial Magistrate is set aside and substituted with the following;

“Each accused: 5 months imprisonment wholly suspended for 3 years on condition accused does not within that period commit any offence involving entering, being or remaining in Zimbabwe without a permit for which he is sentenced to imprisonment without the option of a fine.”

MAXWELL J:

MANYANGADZE J: **Agrees**