

THE STATE
versus
TATENDA MAHLEZA

HIGH COURT OF ZIMBABWE
MAXWELL J
HARARE, 19 March 2025

Criminal Review

MAXWELL J: The record of this matter was referred to me with a note from the scrutinizing magistrate. The accused was arraigned before the court facing a charge of contravening section 29 (1) of the Medicines and Allied Substances Control Act [*Chapter 15:03*] as read with the ninth and tenth schedules of S I 100/1991. He was convicted on his own plea to possessing unregistered medicine. The Scrutinizing Magistrate queried the propriety of the charge and whether in view of the quantities involved possession would be inferred to be for purposes of personal use. The trial magistrates' response was that the accused had indicated that the medicine was for flue for personal use.

The scurtinising magistrate was correct that the quantities involved cannot be inferred to be possession for personal use. Accused had 50 X 100 ml bottles of Adco- Salterpyn Syrup. In addition, on further interview, accused showed the arresting details a broken-down truck where he had hidden other bottles and 40 x 100ml bottles of the same medicine were recovered. These quantities justify the presumption that it could not have been intended for the accused's personal use but for supply or sale to others.

The penalty for an offence in terms of the section under which the accused was charged is a fine not exceeding level 12 or 2 years imprisonment or both such fine and imprisonment. Where the offence is committed in aggravating circumstances, where a fine is imposed, it should be on the deterrent side. The fine of USD 200.00 in default of payment 2 months imprisonment imposed on the accused is too lenient.

Section 280 (1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] provides.

“(1) Where in this Code and any enactment it is provided that a person who is guilty of crime is liable to a fine or a maximum fine by reference to a level on the standard scale, the amount of the fine or the maximum fine, as the case may be, that may be imposed subject to subsection

(1a) shall be the monetary amount specified in the second or third column of the first schedule opposite that level in the first column of the first schedule”

Statutory Instrument 14A of 2023 shows that the monetary amount for level 12 is US \$ 2000.00. To impose a fine of \$200 in such circumstances is to trivialize the offence in an environment where there has been an upsurge of cases involving drug and substance abuse. Such an environment dictates that deferent sentences be imposed on would be suppliers of such drugs and substances that are being abused and impairing communities.

The accused was sentenced on 6 February 2025. He was given time to pay until 28 February 2025. There is a likelihood that he has already paid the fine. In the circumstances all I can do is to withhold my certificate and decline to certify these proceedings as in accordance with real and substantial justice.

MAXWELL J: -----

MANYANGADZE J: -----Agrees