

THE STATE
versus
ELFAS KAMUKOSI

HIGH COURT OF ZIMBABWE
MAXWELL J
HARARE, 19 March 2025

Criminal Review

MAXWELL J: The record of this matter was placed before me for review. Accused was charged of 4 counts of contravening section 89 (1) of the Criminal Law (Codification and Reform) Act [*chapter 9: 23*]. He was convicted on all counts. The conviction is proper. There is however an issue on the sentence on count 3 and 4 on the Review cover. They are stated as follows: -

“Count 3

12 months imprisonment of which 6 months are suspended for 5 years on condition during that period accused does not commit any offence involving violence on the person of another and for which he will be sentenced to imprisonment without the option of a fine. Effective 9 months.

Count 4

15 months imprisonment of which 5 months are suspended for 5 years on condition during that period accused does not commit any offence involving violence on the person of another and for which he will be sentenced to imprisonment without the option of a fine. Effective 9 months.”

I asked the trial Magistrate to comment on the propriety or accuracy of the effective sentences reflected on these two counts. In the third count 12 months were imposed of which 6 were suspended yet the effective sentence was reflected as 9 months. In the fourth count 15 months were imposed of which 5 were suspended and the effective was also reflected as 9 months. The trial magistrate conceded that “the effective sentences in count 3 and 4 are clearly wrong mathematically.” The explanation for the error was.

“What happened is that there was a typing error which was noted and corrected in court by pen at Mutoko Magistrate Court. This is evidenced by the warrant of committal. We later sent the record for review with an uncorrected sentencing judgment since 2 copies had been filed in the record. I should have checked the corrections of the record before sending it.

I apologize for the error”

The trial magistrate proceeded to attach the corrected document as well as the warrant of committal. Indeed, the accused person was committed to prison for the correct period of time. The correctness of the record referred for review ought to have been checked before

submission. That would have served both time and resources. The trial Magistrate is urged to pay attention to detail and ensure that the correct record is forwarded for review.

The sentences on the Review Cover for counts 3 and 4 are corrected to read

“Count 3

12 months imprisonment of which 6 months are suspended for 5 years on condition during that period accused does not commit any offence involving violence on the person of another for which he will be sentenced to imprisonment without the option of a fine. Effective 6 months.

Court 4

15 months imprisonment of which 5 months are suspended for 5 years on condition during that period accused does not commit any offence involving violence on the person of another and for which he will be sentenced to imprisonment without the option of a fine. Effective 10 month.”

With that correction, I certify the proceedings to be in accordance with real and substantial justice.

MAXWELL J: -----

MANYANGADZE J: -----Agrees.