THE STATE
versus
TATENDAGONYA

HIGH COURT OF ZIMBABWE
BERE J
HARARE, 19 January 2015

Criminal Review

BERE J: The 23 year old accused was properly convicted of two counts of unlawful entry as defined in s 131 of the Criminal Law (Codification and Reform) Act [*Cap 9:23*].

The brief facts are that on 17 December 2014 and at 473 Zororo Sakubva, Mutare, the accused unlawfully and intentionally stole a proline laptop and a samsung galaxy cellphone worth $320-00. There is no indication as to whether anything was recovered.

In count two the same accused stole various clothing items and cash in the same neighbourhood. The value of the clothes and cash was put at $243.00 and that only $10.00 was recovered from the accused person.

Both counts were treated as one for purposes of sentence and the accused was sentenced as follows:

> 24 months imprisonment of which 6 months imprisonment is suspended for 5 years on condition accused person does not commit any offence which has unlawful entry as an element within that period for which he will be sentenced to imprisonment without the option to pay a fine".

Without attempting to understate the seriousness of the two offences involved in this case, I am extremely concerned with the casual approach to sentence adopted by the Magistrate who handled the plea. There is nothing in his approach which shows that he is oblivious of the current trends in sentencing.

This court has chained out several decisions which make it abundantly clear that where the trial court determines that an appropriate sentence falls within the range of 24 months imprisonment or below, then serious considerations must be given to the imposition of community service as an alternative to a straight prison term. See ZIMBABWE NATIONAL COMMITTEE ON COMMUNITY SERVICE – REVISED GUIDFILLINGS

FOR MAGISTRATES, PROSECUTORS AND OTHER COURT OFFICIALS*; State* v *Tapiwa Shariwa* HB 37/2003; A Guide to Sentencing in Zimbabwe 2nd ed @ pp 28-29 by G. Feltoe.

The recommended sentencing approach comments itself in basically two ways; viz, it addresses the practical ways of decongesting our prisons and secondly, it gives the accused a second chance to undergo some kind of self-rehabilitation without having to subject him/her to the rigous of incarceration and its effect.

Various studies have been carried out and concluded that imprisonment per se is not the best form of sentence particularly for first offenders. This explains why there is a paradigm shift in our sentencing approach. Every Judicial Officers must be conscious of such trends in sentencing.

In *casu*, it is clear that the Magistrate blindly sentenced the accused person without exploring community service as an alternative. It is precisely for these reasons that I deem the proceedings not to be in accordance with real and substantial justice and I accordingly withhold my certificate.

BERE J: …….