

1. THE STATE

Versus

MOSES MUZA – CRB MPH 40/06

2. THE STATE

Versus

FARAI CHISAMBA – CRB PT 389/06

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 5 JULY 2007

Criminal Review

NDOU J: Both these matters were referred for review by the learned scrutinising Regional Magistrate, Gwanda. In both matters he was rightly concerned by the propriety of the sentences imposed i.e. they were manifestly lenient. Both matters were dealt with by the same learned magistrate, Plumtree and I propose to deal with them in the same judgment for convenience's sake. I propose to give the background facts of the two matters in turn. But, before that, I have to indicate that the accused persons in both matters were properly convicted and nothing turns on the convictions.

State v Muza

On 22 April 2006 the accused person was travelling in Ajay Motorways from Bulawayo to Mphoengs en route to Botswana. He had in his possession 10.425 kilograms of dagga. He wanted to smuggle the dagga to Botswana. Two police details who were travelling in the same bus detected the dagga by its scent leading to his arrest. The accused's age was given as 26 and he is married with three children.

He was sentenced to 12 months imprisonment with 3 months thereof suspended for 5 years on conditions of good future behaviour.

State v Chisamba

The accused travelled from Bulawayo to Plumtree carrying 5.265 kilograms of dagga. He was travelling in a commuter omnibus. When the omnibus got to Plumtree the police searched and found the dagga. The public prosecutor made determined submissions in aggravation. The prosecutor's submissions clearly capture the accused's moral blameworthiness. He also highlighted the prevalence of the offences of people smuggling large quantities of dagga to Botswana for commercial purposes. The trial magistrate did not appreciate these submissions. She went on to impose a sentence of 9 months wholly suspended on conditions of good future behaviour and performance of community service.

I am in agreement with the observation by the learned scrutinising Regional Magistrate. In *Attorney-General v Sibanda and Ors* S 94-88 unemployed women first offenders with children, had each been convicted of possessing large quantities of dagga, varying from 5.05 kilograms to 10 kilograms which they intended to sell to maintain their families. On appeal it was held, *inter alia*, that the following sentences should have been imposed:

- 2 ½ years imprisonment with half suspended, in respect of the offender who possessed 5.05 kilograms of dagga;
- 3 years imprisonment with half suspended in respect of an offender who possessed 7.5 kilograms of dagga;
- 3 years imprisonment of which one year is suspended for offenders who possessed between 8 and 8.5 kilograms of dagga; and
- 4 years imprisonment with 18 months suspended for offenders who possessed 10 kilograms of dagga.

In *S v Chingwena & Anor* HH-251-89, the appellant, a female first offender had been found, with a male accomplice, in possession of 1.275 kilograms of dagga which she admitted was intended for sale. She had been sentenced to 2 years imprisonment with 9 months suspended on the usual conditions of good behaviour. On appeal it was held that the sentence was not excessive.

From the foregoing precedents, it is clear that the sentences imposed *in casu* are unusually lenient. It is important for trial magistrates to note that they need to be guided by the principles of consistency in imposing sentence. Regard must be had to sentences imposed in similar cases – *Gerber v S* [2006] 4 ALL SA 423 (SCA). The accused persons had large quantities of dagga. They are cross border drug dealers who were going to sell the dagga in Botswana. Such cross-border drug dealers are very prevalent as alluded to by the prosecution in submissions in aggravation. International drug trafficking is a very serious offence.

In *Muza* case a sentence in the region of 5 to 6 years imprisonment with part suspended was called for.

In the *Chisamba* case a sentence in the region of 3 to 4 years imprisonment with part suspended was called for.

Accordingly, I am unable to certify these proceedings as being in accordance with true and substantial justice and I withhold my certificate.