

THE STATE

Versus

ISHMAEL TONDERAI MLILO

IN THE HIGH COURT OF ZIMBABWE
BERE J
BULAWAYO 14 MARCH 2008

Criminal Review

BERE J: In this case the accused was convicted of the offence of housebreaking with intent to steal and theft (as it then was) and sentenced to 20 months imprisonment with 6 months suspended on condition of restitution leaving him with an effective prison term of 14 months.

Nothing turns on the conviction but it is the sentence which has caught the attention of the review court.

It has been stated time without number in this same court that it is clearly a misdirection to sentence an accused to a period of 24 months or less without first considering community service as an alternative. See the cases of *S v Zvikonde and Anor* HH-104-04; *S v Tapiwa Shariwa* HB-37-03.

It is clear from the record of proceedings that when the court *a quo* embarked on its pre-sentence inquiry, it was not alive to the need to consider community service as an alternative to a straight term of imprisonment.

This court will not countenance blind and insatiable determination to send convicted persons to goal without first exploring other alternatives available to the court *a quo*.

I need to emphasise the fact that a prison term is a rigorous form of punishment which must only be resorted to when other available forms of punishment are explored and found to be inappropriate.

Judgment No. HB 18/08
Case No. HC 2506/07
CRB 563/06

For the above-referred misdirection I am unable to confirm the proceedings as being in accordance with real and substantial justice and I decline to confirm same.

Cheda J I agree