

**THE STATE**

**Versus**

- (1) DANIEL SIBANDA**
- (2) MTHOKOZISI DUBE**
- (3) ALECK MUDIMBA – CRB B 91/07**

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

Criminal Review

**BERE J:** These matters emanate from the same station, were handled by the same presiding magistrate and they all bear same issues of concern to the review court hence my decision to adopt a global approach in dealing with them in this judgment.

The accused persons were properly convicted in all these matters and it is the sentencing approach to sentence which is of concern to the review court.

In two of these matters the accused persons were sentenced to 18 months imprisonment portions of which were suspended on appropriate conditions. In the remaining case, the accused was sentenced to 20 months imprisonment part of which was suspended again on appropriate conditions.

In two of the cases the accused persons had previous convictions. I must hasten to add that in a proper case, the existence of previous convictions *per se* would not preclude the imposition of community service if it is deemed to be the desired sentence.

It is noted with concern that in all the three matters consideration was not given to the imposition of community service as an alternative. In fact no enquiry in this regard was conducted by the trial court despite the desired sentences being less than 24 months imprisonment. This is against a plethora of decisions from this same court harping on the same point.

It was incumbent upon the court *a quo* to consider the imposition of community service as an alternative form of punishment, and only when he decided against such a form of punishment should he have proceeded to impose the sentences imposed, with his reasons for doing so clearly stated. Failure to do so was a misdirection. See the following cases for further guidance: *S v Zvikonde and Anor* HH-104-04 and *S v Tapiwa Shariwa* HB 37-03.

In the light of this misdirection I decline to certify the proceedings as being in accordance with real and substantial justice.

Kamocha J ..... I agree