

THE STATE
versus
LAMBO MIKE CHAUKE

HIGH COURT OF ZIMBABWE
MAWADZE & MUREMBA JJ
HARARE, 7 January 2014

Criminal Review

MAWADZE J: The accused was convicted after a protracted trial of contravening s 60A (3) (a) of the Electricity Act [*Cap13:19*] and sentenced to the mandatory minimum of 10 years imprisonment.

The proved facts are as follows;

In November 2013 the accused was left at No. 623 Gonville Gutu by the complainant as a caretaker at the house. It is alleged that the accused decided to by-pass the meter box and connected electricity directly to the distribution box. The consumption of the electricity was therefore not recorded and accused was using the electricity of the house with fellow tenants. The matter came to light in February 2014 when employees from Zimbabwe Electricity Transmission and Distribution Company discovered the offence and alerted the complainant who reported the matter to Police. The actual prejudice caused is not quantified.

What exercised my mind is the propriety of the charge in view of the facts of this case.

The relevant s 60 A (3) (b) provides as follows;

“(3) Any person who without lawful excuse the proof whereof shall lie on him or her___

(a) tampers with an apparatus for generating transmitting distributing or supplying electricity with the result that any supply of electricity is interrupted or cut off; or

.....

(b) (Not relevant)

shall be guilty of an offence, and if there are no special circumstances peculiar to the case as provided for in subsection (4), be liable to imprisonment for a period of not less than ten years” (emphasis is my own)

While it is common cause that the accused tampered with the apparatus transmitting, distributing or supplying electricity by passing the metres box for it not to read consumption,

such conduct did not result in the supply of electricity being interrupted or cut off as is envisaged in s 60 A (3) (a) of the Electricity Act [*Cap 13:19*]

The accused should have been charged and convicted of contravening s 60 A (i) (a) of the Electricity Act [*Cap 13:19*] which provides as follows.

“60 A offences in relation to electric current and apparatus

(1) Any person who, without lawful excuse, the proof whereof shall lie on him or her ____

(a) Abstracts or diverts any electric current or causes any electric current to be abstracted or diverted; or

(b) Uses any electric current knowing it to have been abstracted or diverted;
Shall be guilty of an offence and liable to a fine not exceeding level fourteen or imprisonment for period not exceeding five years or both such fine and such imprisonment.”

The facts found proved clearly show that the accused diverted the electric current by passing the metre box for it not to read or record the consumption.

While it is clear that the accused was charged and convicted of a wrongly cited provision of the Electricity Act [*Cap13:19*], the fact remains that the accused’s conduct amounts to criminal conduct as explained above. There is therefore no prejudice if the charge is altered in order to reflect the correct citation of the charge, that is contravening s 60 A (1) (a) of the Electricity Act [*Cap 13:19*].

The penalty provisions for contravening s 60 A (1) (a) provides for a fine not exceeding level fourteen or imprisonment for a period not exceeding 5 years or both. It is different from the penalty provision for contravening s 60 A (3) (a) which provides for a mandatory minimum of 10 years in the absence of special circumstances.

The charge for which the accused stands convicted is therefore amended is therefore amended to read;

“Contravening s 60 A (1) (a) of the Electricity Act [*Cap13:19*]”

The conviction is otherwise confirmed.

In view of the amendment to the charge, the minimum permissible sentence is a fine not exceeding US\$5 000 or imprisonment not exceeding 5 years.

The accused is not a first offender. As per the record he was on 3 November 2014 convicted of two counts of theft as defined in s 113 of the Criminal Code [*Cap 9:23*] and sentenced to 12 months imprisonment of which 6 months imprisonment were suspended on condition of restitution. As per the record accused failed to pay restitution and on 2 December 2014 was ordered to serve the 6 months imprisonment which had been suspended

on condition of restitution. As per the record accused failed to pay restitution and on 2 December 2014 was order to serve the 6 months imprisonment.

The accused is 28 years old, married with one child. He is employed as a vendor earning about \$75 per month and looks after 4 orphans. The accused has neither savings nor assets.

On the other hand accused's moral blameworthiness remains high. He went out of his way to divert the electric current by by-passing the metre box in order to ensure that he did not pay for the electricity used. There is therefore actual prejudice to Zimbabwe Electricity Transmission and Distribution Company. Unfortunately the extent of the actual prejudice was not quantified. There is therefore need for a deterrent sentence and to ensure that accused desists from the pursuing the criminal path he seems determined to embark on. In view of the fact that accused has a criminal record and is currently in prison, a fine is not appropriate.

In the result, the sentence of 10 years imprisonment imposed by the court *aquo* is set aside and substituted with the following;

“6 months imprisonment.”

MUREMBA J agrees: