

THE STATE
versus
TARISAI RUGARE CHIRIGA

HIGH COURT OF ZIMBABWE
PHIRI & MUSHORE JJ
HARARE, 06 April 2016

Criminal Review

PHIRI J: This is a matter which was brought to me on Review, and, because of the seriousness of the offence I have deemed it fit to give a written judgment on review.

The accused was charged with 3 counts of extortion as defined in s 134 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].

Section 134 of the aforesaid Act states:

“Any person who:

- (a) Intentionally exerts illegitimate pressure on another person with the purpose of extracting an advantage, whether for himself or herself or for some other person, and whether or not it is due to him or her, from that other person, or causing that other person loss; and
- (b) By means of the illegitimate pressure, obtains the advantage, or causes the loss;

Shall be guilty of extortion and liable to:

- (i) a fine not exceeding level thirteen or not exceeding twice the value of any property obtained by him or her as a result of the crime, whichever is the greater; or
- (ii) imprisonment for a period exceeding fifteen years or both”. (the underlining is mine)

The Charge

The accused was charged and convicted of three counts of Extortion as defined in s 134 of the Criminal Law (Codification and Reform Act, [*Chapter 9:23*].

The Sentence

All the three counts were treated as one and accused was sentenced to 30 months imprisonment of which 6 months were suspended for 5 years on condition the accused does not during that period commit any offence involving the elements of extortion and for which he is sentenced to imprisonment without the option of a fine.

A further 12 months were suspended on condition the accused pays restitution as follows : \$1 590-00 to Sydney Zulu, \$450-00 to Norman Zulu.

The effective sentence was 12 months imprisonment.

It is my considered view that the sentence was far too lenient given the gravity of the matters under review.

THE FACTS

The facts of these matters are as follows:

Count One

In this count, during November 2015 the accused told 3 of his ZAOGA Kuwadzana Church mates that he had joined the Central Intelligence Organisation.

He told one of the complainants that he was based at state House where he was an escort driver and was responsible for killing people at State House and in Chishawasha by throwing them in acid for different offences.

On several occasions the accused person would call complainants and pretend to be George Charamba or VP Mwangagwa, and demand that they, the complainants, would give the accused person some money or else they will be killed in Chishawasha by being thrown in acid. The accused extorted a total amount of US\$1 510-00.

On another occasion the accused person also took one of the complainant's original birth certificate copy saying it was required by the president.

In my view this was supposed to be a separate count (Although it was incorporated in the first count.)

Count Two

During the month of August, 2015 the accused person telephoned Tinashe Madamire, Sydney Zulu and Norman Zulu and pretended to be "Cde Gorge Charamba" or "Vice President Mwangagwa" and demanded that complainants should give the accused person some money for his journeys whenever it was required or else they (the complainants) would be killed in Chishawasha by being thrown in acid.

The total value extorted was US\$450-00 and a silver jacket.

Count Three

During December 2015 the accused person demanded and received a g Tel 706 Mobile phone hand set and a USB Cable after threatening the complainant that he would phone Vice president Mwangagwa if he refuses with the phone.

The accused person was arrested after a trap when he had come to collect \$60-00 which he had demanded.

The learned magistrate correctly observed that the name of the President, Vice President and the Central Intelligence Organisation was brought into disrepute.

However, in my view these offences were well calculated and planned. The *modus operandi* used to threaten and extort funds or items, from the complainants, was the same.

In my opinion this is the kind of matter that was so serious that a much more stiffer and deterrent sentence should have been imposed in order to send a clear message to the accused and any likeminded persons to desist from abusing and bringing into disrepute the Presidency, the Central Intelligence Organisation and or any other government officials.

Accordingly, my view that the sentence imposed was far too lenient, and for that reason I withhold my certificate of confirmation that the sentence imposed was in accordance with real and substantial justice.

MUSHORE J: agrees