

SEBASTIAN MUCHICHWA REVAYI v THE STATE

SUPREME COURT OF
ZIMBABWE, HARARE,
NOVEMBER 3, 1983.

Before: GUBBAY JA, in Chambers, in terms of s
23 of the Supreme Court of Zimbabwe Act 1981

The applicant has applied for leave to prosecute in person an appeal against both conviction and sentence.

He was convicted in the Regional Court on one count of robbery (committed in circumstances of aggravation) and on another of contravening s 5(2)(a) of the Firearms Act [Cap 308] in that he was in unlawful possession of a G3 rifle. He was sentenced to ten years' imprisonment with labour on the first count and to five years' imprisonment with labour on the second count, but the latter sentence was ordered to run concurrently with the former. In addition a suspended sentence of three years' imprisonment imposed on 6 September 1978 was brought into operation. Effectively, therefore, he was ordered to undergo 13 years' imprisonment with labour.

There is no merit in the application for leave to appeal against either conviction and it is refused.

As the overall period of 13 years' imprisonment seemed to me to be manifestly excessive I addressed the following remarks to the Attorney-General

"The Regional Magistrate was correct in ordering the accused to serve ten years in the light of his previous convictions. But I consider he ought to have either further suspended the three years imposed on 6 September 1978, or brought it into operation and then ordered it to run

concurrently with his sentence. That course would seem the more preferable since there is little benefit to a suspended sentence when it is conjoined with as long a term as ten years actual imprisonment. Does the Attorney-General agree?"

The Attorney-General does agree that 13 years is too long a term for the applicant to have to serve and that as the suspended sentence did not deter him from committing the present offences there is little point in further suspending it in order to effect a justified reduction in punishment.

Accordingly, in the exercise of the powers, of review vested in judges of this Court by s 23 of the Supreme Court Act 1981, the sentence imposed by the Regional Magistrate is altered by ordering that the suspended sentence which he put into operation is also to run concurrently with the sentence of ten years' imprisonment imposed on the first count.

The applicant will therefore serve a period of ten years' imprisonment with labour.

The CHIEF JUSTICE agrees.