

Judgment No. 22/11
Civil Appeal No. 154/07

MICHAEL PETER HITSHMANN v THE STATE

SUPREME COURT OF ZIMBABWE
MALABA DCJ, ZIYAMBI JA & CHEDA AJA
HARARE, FEBRUARY 11, 2011

T Mpofo, for the appellant

A Masamha, for the respondent

MALABA DCJ: The unanimous view of the Court is that the appeal is without merit.

The facts which are common cause show that the appellant was found in possession of weapons designated as dangerous weapons under s 13(1) of the Public Order and Security Act [*Cap. 11:17*].

The section prohibited possession of the weapons in question without a ministerial authority. The appellant did not obtain the requisite authority before he took the weapons into his possession. The argument that the appellant did not act unlawfully because he intended to hand the weapons to the police ignores the essential elements of the offence. He knew that he needed to have the necessary ministerial authority before he

took those dangerous weapons into his possession. He was a general arms dealer whose general licence could not provide authority for the possession of the dangerous weapons. It is clear from his own explanation that his conduct was a deliberate violation of the law.

The trial court properly found the appellant guilty of contravening s 13(1) of the Act.

On sentence, the court *a quo* considered the mitigating factors and weighed them against the aggravating features. Amongst the mitigating factors it took into account were the lengthy pre-trial incarceration of the appellant, the torture the appellant was subjected to by the State agents prior to being prosecuted; his contributions to the local community and that he was a first offender. The aggravating features the Court took into account included the seriousness of the offence particularly that he knew as a professional arms dealer and former member of the special constabulary and that these were dangerous weapons the use of which could seriously affect national security.

The court *a quo* exercised its discretion and imposed the sentence of 4 years imprisonment of which 1 year was suspended on the usual conditions.

We do not share the view that the court *a quo* did not place sufficient weight on the mitigatory factors which it clearly took into account. The sentence imposed reflects that the Court considered the mitigatory factors to be weighty because the maximum sentence for the offence is 10 years.

The appeal is accordingly dismissed.

ZIYAMBI JA: I agree

CHEDA AJA: I agree

Zimbabwe Lawyers for Human Rights, applicant's legal practitioners
Attorney-General's office, respondent's legal practitioners