

(1) SAMSON MOMBERUME TAGUTA (2) TITUS M. TAGUTA  
(3) AMBROSE M. TAGUTA (4) ELIAKIM M. TAGUTA (5)  
ESROM M. TAGUTA (6) ELMOND M. TAGUTA (7)  
JAMES M. TAGUTA (8) ZIBERT M. MOMBERUME  
(9) STEPHEN M. TAGUTA  
v  
THE STATE

**SUPREME COURT OF ZIMBABWE**  
**MALABA DCJ, ZIYAMBI JA & OMERJEE AJA**  
**HARARE, JULY 9, 2012**

Mr *Mucheriwesi*, for the appellants

No appearance for the respondents

**MALABA DCJ:** At the end of hearing argument for the appellants the appeal was dismissed. There was no appearance for the respondent. It was indicated at the time that reasons for the decision would follow in due course. These are they.

The facts of the case are as follows. The appellants and the complainants were members of two rival factions of the Johanne Marange Apostolic Faith Church led by Noah Taguta and Clemence Momberume respectively. The appellants and the complainants are related as they are cousins.

On 18 July 2001, the elder son of the founder member of Johanne Marange Apostolic Church, Oliver Momberume passed away. Members of the factions gathered for the funeral at the deceased's homestead in Taguta Village, Chief Marange, Mutare. Public Violence erupted between the two factions following disagreements concerning the provision

of a coffin for the late Oliver Momberume. The complainants led by Clemence Momberume had bought the coffin. The appellants were not happy with this arrangement hence destroyed the coffin and burnt it. They assaulted the complainants and burnt their property, seriously injuring the complainants who suffered permanent disabilities. Property valued at ZW\$440 130 was destroyed.

The violence was over a protracted period of time lasting from morning of 18 July 2001 to morning of the next day. The police had to call for reinforcements to quell the violence. The ten appellants together with others were charged with public violence. However, it is the ten appellants who were convicted of the offence. They were sentenced to 36 months imprisonment of which 10 months were suspended for 5 years on conditions of good behaviour. A further 10 months imprisonment was suspended on conditions of restitution. As such each appellant was to serve an effective sentence of 16 months imprisonment.

In sentencing the appellant, the magistrate took into account the seriousness of the offence. The offence was aggravated by the fact that the appellants are members of a respective church organisation. As noted by the court *a quo* their conduct was not only unlawful but contrary to the values and tenets of all Christian teachings and morality. It was further aggravated, not only by the number of people involved but by their relationship. The complainants were subjected to protracted relentless acts of violence. It needed the intervention of armed police to quell the violence. Property worth thousands of dollars was destroyed. The complainants suffered bodily injuries while one of them was maimed for life sustaining a 23% permanent disability.

The magistrate took into account mitigatory factors. In particular, he considered that the appellants were family men with large families of so many wives and children. Further, that they were first offenders. He accounted for the weight of mitigation by suspending part of the sentence. However, the aggravating factors far outweighed the mitigating circumstances. The appellants appealed to the High Court against both conviction and sentence. The appellants have now appealed to this Court against sentence only.

The only issue that falls for determination is whether or not the sentence imposed by the magistrate and confirmed by the High Court was inappropriate.

Undoubtedly the offence committed by the appellants was serious. It is trite that, in the absence of a misdirection or gross irregularity or abuse of the judicial function, an appellate court will not interfere with the sentence imposed by the trial court unless the sentence is viewed as disturbingly inappropriate.

In numerous cases which have been reported including it has been pointed out that it is not for an appellate court to interfere with the discretion of the sentencing court merely on the ground that the appeal court might have passed a sentence somewhat different from that imposed. If the sentence complies with the relevant principles, even if it is more severe than one which the appeal court would have imposed had it been sitting as the court of first instance, the appeal court will not interfere with the discretion of sentencing court. The appeal court aims not so much at uniformity of sentence but uniformity of approach.

In *S v Ramushu & Ors* S-25-93 GUBBAY CJ reiterated this principle as follows:

“But in every appeal against sentence, save where it is vitiated by irregularity or misdirection, the guiding principle to be applied is that sentence is pre-eminently a matter for the discretion of the trial court, and that appellate courts should be careful not to erode such discretion. The propriety of a sentence, attached on the general ground of being excessive, should only be altered if it is viewed as being disturbingly inappropriate.”

Applying these principles the court finds that the High Court did not misdirect itself in holding that the sentence meted out by the trial court eminently fitted the offenders and the offence committed. No misdirection or irregularity is apparent on record. It is clear from the magistrate’s reasons for sentence that he considered, and correctly so, that imprisonment was the only appropriate sentence. The trial court’s approach to sentence, cannot be faulted.

Mr *Muchiriwesi* for the appellants sought to argue that the violence was localised and arose amongst members of the same family and church. The argument that violence was localised and that the court *a quo* ought not to have taken a serious view of the appellants’ conduct ignores the fact that it was the nature of the acts and their consequences which aggravated the offence not the place where the offence occurred. The appellants and the complainants belonged to the same church and one would have expected them to act as brothers to protect each other, for the protection of their religious faith.

The fact that they turned violent against each other and were prepared to inflict serious injuries on the complainants suggests that this was a pre-planned offence

executed with determination as evidenced by the length of time it took before the appellants were restrained. They only terminated their acts of violence as a result of the intervention by police who were armed.

A deterrent sentence was called for to send a message to members of the public and worshippers in particular that the law will not tolerate violent conduct which does not only divide people but cause injury or damage to people or property. Further, no contrition was shown by the appellants in terms of payment of restitution. Thus no steps of reconciliation were even taken.

The appeal was accordingly dismissed.

**ZIYAMBI JA:** I agree

**OMERJEE AJA:** I agree

*Mushangwe & Partners*, appellants' legal practitioners