

THE STATE

AND

THABANI TSHUMA

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 21 FEBRUARY 2013

Review Judgment

CHEDA J: The accused was charged with contravening section 114 and Criminal Law Codification and Reform Act [Chapter 9:23], [stock theft].

He pleaded not guilty but was however convicted of the said offence and sentenced as follows:

“9 years imprisonment. In addition the accused is sentenced to a further 4 years imprisonment. 13 years effective.”

There is no State outline contained in the record and the trial magistrate has now left service after my query of the 28th November 2012 regarding the propriety of the sentence. I queried the propriety of a further imposition of a sentence of 4 years. There is no explanation to this query as the magistrate has left service.

In as much as the sentence of 9 years imprisonment is mandatory I have a problem with an additional sentence of 4 years in prison imposed without any explanation.

To me it appears to have been erroneously passed on the accused. The courts should always work within the four corners of the statute, as they themselves are a creature of such. The empowerment and jurisdiction accorded the courts by the Legislature should be judicially exercised. The exercise should not result in the passing of sentences which may lead a reasonable man of the judicial officer’s status into concluding that the sentence was passed without proper and diligent application. In the absence of an explanation by the learned trial magistrate; this apparent misdirection can not be allowed to stand.

Accordingly the following order is made:

Order

- (1) The conviction is confirmed
- (2) The sentence is set aside and substituted by the sentence of 9 years imprisonment.

Cheda J.....

Mutema J agrees.....