

THE STATE

Versus

NKOSIOMUSA NCUBE

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 24 JANUARY 2013

Review Judgment

CHEDA J: This is a matter for review.

The accused an 18 year old man was arraigned before the courts on allegations of contravening section 89 of the Criminal Law Codification and Reform Act [Chapter 9:23].

The brief facts which are common cause are that he had a misunderstanding with the complainant resulting in him assaulting the complainant on the knees and head with the back of the axe. Complainant sustained injuries.

Accused pleaded guilty and was convicted and sentenced to receive a moderate correction of 4 cuts with a rattan cane to be administered by a prison officer in Lupane. Before the sentence was carried out, the prison officer observed that the accused had swollen testicles, which medical condition was confirmed by a nursing sister at Lupane prison clinic.

It is the prison authorities' opinion that the said sentence can not be carried out without possible further harm on the accused.

A sentence of the court should be administered on an accused or prisoner as the case maybe, only if the said individual is visibly or clinically healthy. Where an individual shows signs or symptoms of ill health even to the eye of an untrained personnel, the courts or any official should not carry it out unless there is medical evidential proof that such a sentence can be carried out without further jeopardising his or her health.

The prison officer's observation is indeed commendable.

The following is accordingly made:-

Order

- (1) The conviction is confirmed
- (2) The sentence is set aside and substituted by the following:
 - (2:1) 6 months imprisonment wholly suspended for 5 years on condition accused does not during that period commit any offence of which violence is an element for which upon conviction accused is sentenced to imprisonment without the option of a fine.

Cheda J.....

Kamocha J agrees.....