

THE STATE
versus
GIFT KUFANDIRORI

HIGH COURT OF ZIMBABWE
MUREMBA J
HARARE, 26 August 2024

Criminal Review Judgment

MUREMBA J: The accused was charged with and convicted of physical abuse as defined in section 3(1)(a) as read with section 4(1) of the Domestic Violence Act [*Chapter 5:16*] after a contested trial in the Magistrates Court. Upon reviewing the record, I was deeply concerned by the judgment of the trial magistrate, which is not well written.

The judgment exhibits several critical deficiencies that undermine its effectiveness and reliability. The language used is informal and unprofessional, with numerous grammatical errors that detract from the clarity and precision required in a judgment. Furthermore, the content is inadequately detailed, failing to provide a comprehensive summary of the evidence presented by both the State and the accused. The analysis of the evidence is superficial and appears biased, as the magistrate dismissed the accused's evidence without proper consideration. These shortcomings collectively compromise the integrity of the judgment and make it difficult for the reader to determine whether the conviction was proper. It is unfortunate that the skill of composing judgments is not formally taught; it is acquired through practice and the study of exemplary models found in the law reports.

A well-written judgment following a criminal trial should have several key characteristics to ensure clarity and comprehensibility for readers. It should effectively communicate the court's decision and reasoning to anyone, even those who did not follow the trial proceedings or read the record of proceedings. It should be a self-contained document that clearly outlines the facts of the case, the controversy being addressed, and the manner in which the court resolved the issue.

I now quote *verbatim* the judgment written by the trial magistrate.

“Judgment

Accused is charged with physical abuse under the Domestic Violence Act. He is a self-actor and pleads not guilty.

Allegation

The State alleges that on 2nd day of March 2023 at Plot 2 Chirunzi Farm, Christonbank, Mazowe the accused hit complainant with open hands several times on the face and head with booted feet several times all over the body.

Defence

The accused has offered a convoluted defence. In brief he stipulates that the complainant was assaulted by her own boyfriend and then security guards that were trying to refrain her when grabbing the accused’s private parts. He continues to hold that he did not assault the complainant.

Evidence and Analysis

The State opens its case by calling the complainant herself.

She is a cogent and consistent witness. She narrates what transpired on the day in question fluently and answers all of the State’s questions quiet adequately.

She notes that accused assaulted her on the day in question to the extent that she was rescued by security guards. And even took her skirt, Zambia and slipper from her. She went to the police to report the matter.

The witness also produced a medical affidavit. It corroborates the complainant’s testimony regarding her injuries. Injuries observed are to her face, back and head.

Cross examination of the witness is brief with only 3 questions. Nothing is revealed from such as complainant is consistent with her version.

The matter then put to defence. Accused gave his evidence under oath. He is persistent with his version it appears even more ludicrous and faltering.

The court finds in the following:

This is a single witness matter. It is the complainant version however which is consistent and cogent. It is contrasted to the accused version which is laughable.

He initially offers a convoluted defence that has no single narrative. He tells the court that complainant’s boyfriend assaulted her then proceeded to tell the court that the security guards too assaulted her with boots. What are the odds that complainant was assaulted by two different set

of people in the same narrative. It is my view that the accused is simply attempting to justify the complainant's injuries. It is rather futile and a ridiculous excuse and defense. The court in fact can see right through.

The court is of the view, the accused who is not accepting the fact that he is estranged from his wife, was angered when he saw his wife with someone else. He proceeded to vent his anger on the complainant to the extent that she had to be rescued by the security guards.

Her version is rather tangible to her version of events and the medical affidavit confirms such.

Thus when considering the evidence of this single witness the court assesses the merits of it against the demerits and I find that the complainant's version can only be attributed to the merits. Accused is not a credible witness and his version of events is not even believable. He is simply lying to this court with his false narrative.

It is for this reason the court finds in favour of the complainant and finds the state managed to prove its case beyond a reasonable doubt.

Accordingly, accused is found Guilty as charged."

The judgment has several notable shortcomings in terms of language, content, and analysis. The language used is too informal for a legal judgment, with words like "laughable" being inappropriate and unprofessional. The judgment employs dismissive and subjective language, such as calling the accused's defence "laughable" and "ridiculous," which can indicate bias and a lack of impartiality which are crucial elements in judicial proceedings. Numerous grammatical errors and awkward sentence structures make the judgment difficult to read and understand. The judgment lacks clarity in several places, making it hard to follow the magistrate's reasoning.

The allegations section is too brief and lacks detail, failing to provide sufficient context about the case. It should have included a brief but comprehensive summary of the prosecution's case. The defence outline is not clearly and fully presented. The summary of the evidence is vague and lacks detail about how the complainant was assaulted by the accused and how the accused denied the assault. The analysis of the evidence is superficial and lacks depth, failing to adequately explain how the evidence supports the findings. The judgment appears biased, with the magistrate dismissing the accused's defence as "ludicrous and faltering" without proper analysis. It does not

explain why the complainant's testimony is considered more credible than the accused's. The judgment does not provide a detailed analysis of why the complainant's version is deemed consistent and cogent, nor does it thoroughly dissect the accused's defence. A more detailed examination of the evidence and reasoning would have strengthened the judgment. Additionally, the judgment makes assumptions about the accused's motives and state of mind, such as being angered by seeing his estranged wife with someone else. These assumptions are not backed by concrete evidence presented in the judgment. The judgment appears to dismiss the accused's defence without thorough consideration. Even if the defence seems implausible, it is important for the court to address each point raised by the defence comprehensively.

The points highlighted above emphasize the importance of a balanced, thorough, and impartial approach in judgment writing to ensure fairness and justice. A well-written judgment should be clear, concise, and logically structured, maintaining objectivity and impartiality. The trial magistrate's judgment in this matter serves as a reminder of the critical aspects to consider in judgment writing, such as language, content, and analysis.

Key aspects of language include clarity and precision, a formal tone, and correct grammar and syntax. It is essential to use clear, unambiguous, and professional language, avoiding any bias to ensure objectivity. Maintaining a formal and respectful tone throughout the judgment is crucial. Correct grammar and sentence structure enhance readability. Legal judgments should uphold impartiality and respect, regardless of the perceived quality of the accused's defence. Describing a defence as "laughable" can be seen as disrespectful and may undermine the dignity of court proceedings. Instead, judicial officers should use neutral and objective language to critique the defence, such as describing it as "unconvincing," "lacking in credibility," or "not supported by the evidence." This approach maintains the professionalism and decorum expected in judgments.

Regarding content, it is essential to clearly state the charges against the accused and their plea. The allegations made by the prosecution and the defence outline provided by the accused should be summarized. Both the prosecution's and defence's cases should be detailed. In this case, the complainant's testimony about her relationship with the accused should have been explained, including her account of the assault and the circumstances surrounding it. The defence offered by the accused should also have been outlined. The judgment did not specify how the complainant was allegedly assaulted by her boyfriend and the security guards. Following this, there should be

a detailed analysis of the evidence and an explanation of how it supports the judicial officer's findings. The judicial officer must clearly explain the reasoning behind the findings and conclusions. Addressing these issues will make the judgment clearer, more professional, and more persuasive.

Regarding analysis, it is crucial to evaluate the evidence objectively and without bias. The judicial officer must ensure that the judgment is consistent with the evidence and the law. This requires a detailed examination of the evidence. The judicial officer should provide a comprehensive analysis of both the prosecution's and the accused's versions of events, including any inconsistencies, corroborative evidence, and the context of each testimony. The court should thoroughly address points raised by the defence, even if they seem implausible, to ensure the accused's rights are respected and the judgment is based on a fair assessment of all evidence. The court should refrain from making assumptions about the accused's motives or state of mind unless supported by concrete evidence, as speculation can undermine the fairness of the judgment. In assessing the credibility of witnesses, the court should consider potential biases, memory errors, and other factors that could affect the reliability of their testimony. The judgment should clearly explain the reasoning behind the court's conclusions, including why certain evidence was deemed more credible or reliable than other evidence.

By incorporating the elements highlighted above, the court can ensure a more balanced, thorough, and fair judgment that respects the rights of both the complainant and the accused. Due to the shortcomings mentioned above, I had to review the entire record of proceedings to determine if the accused's conviction was proper. Here is what I gathered from the record.

The State's Allegations

The State alleged that the accused and the complainant were husband and wife. On March 2, 2023, at Plot 2 Chirunzi Farm, Christonbank, Mazowe, the accused told the complainant that she was wasting her time by continuing to stay with him. In response, she told the accused that she no longer loved him. This did not sit well with the accused, who then hit the complainant several times on the face and head with open hands and kicked her with booted feet all over her body. The complainant ran away from the scene and was rescued by some security guards who were on duty.

Defence Outline

In denying the charge, the accused stated that he did not assault the complainant at all. He claimed that he went to the complainant's parents to collect her and saw her with a boyfriend. The boyfriend started to assault her, accusing her of staying with the accused. The accused said he then attacked the boyfriend. In response, the complainant grabbed the accused's private parts. The security guards on duty came to the accused's rescue by assaulting her to restrain her. After being rescued, the accused went to his aunt's place, and the complainant was taken away by the security guards. The accused was informed the next morning that the complainant had reported him for assault.

Evidence

The State called the complainant as its sole witness. Her testimony was as follows: She was 22 years old, and the accused was her former husband. They had lived together for six years before separating on November 2, 2022. They had two children together. There was animosity between them as the accused had assaulted her multiple times, evidenced by three medical affidavits. He had stabbed her with an umbrella and a knife.

Regarding the assault that led to the accused's arrest, he waited for her on the road as she was going to church. She was walking with Baba Anna, whom she had met on the way. She denied that Baba Anna was her boyfriend. She stated that the accused then began to assault her, attempting to choke her and stepping on her back and head with gumboots several times. Baba Anna, who had run away, did not witness the assault. The complainant said she ran to some security guards while crying and shouting. The security guards came to her rescue, and the accused even tried to fight them. The security guards took her inside the fence. She mentioned Baba Innocent, a security guard, as the person who witnessed the accused assaulting her. The complainant said she sustained injuries and produced a medical affidavit as proof. She did not know why the accused was assaulting her, but he was saying that she was wasting his time. She denied being assaulted by her boyfriend and the security guards and also denied grabbing the accused's private parts. She testified that the accused took her skirt, Zambia, and slipper.

The medical report stated that the complainant had a swollen face, a swollen back, and a swollen left lateral aspect of the occipital region. The injuries were described as moderate, with no possibility of permanent injury.

During cross-examination, the complainant remained consistent in her account. The accused's cross-examination was brief and did not reveal any inconsistencies. The complainant maintained that she did not assault the accused and that she was not assaulted by her boyfriend or the security guards.

In the defence case, the accused essentially repeated what he had stated in his defence outline. Under cross-examination, he said that at the time of the assault, he was no longer living with the complainant as she had run away from home. However, he stated that she was still his wife as they had not divorced, and he still loved her. The accused claimed that it was her boyfriend who assaulted her because he questioned why she was still in contact with the accused. He further stated that the security guards also assaulted her with baton sticks to restrain her from grabbing his private parts.

My analysis

This case relied on the testimony of a single witness, the complainant. It is unclear why the State did not present evidence from Baba Anna and Baba Innocent, who could have corroborated the complainant's account. The record of proceedings is silent on this matter. However, it is evident that the complainant provided a consistent and detailed account of the events, stating that the accused assaulted her and that she was rescued by security guards. The complainant's testimony was corroborated by a medical affidavit detailing injuries to her face, back, and head. On the other hand, the accused's testimony appeared implausible. It is illogical that the complainant would retaliate by assaulting the accused, who claimed he was now assaulting the boyfriend to protect her. It does not make sense that she would assault the person who was defending her. It is also illogical that she would report the same person to the police, alleging that he was the one who assaulted her. If she had been assaulted by her boyfriend and the security guards, as the accused claims, those are the individuals she would have reported.

The complainant's testimony, supported by medical evidence, is sufficient to establish the accused's guilt beyond a reasonable doubt. In terms of s 269 of the Criminal Procedure and

Evidence Act [*Chapter 9:07*], it is lawful for the court to convict an accused on the basis of the evidence of a competent and credible single witness. G Feltoe in the *Magistrates Handbook*, Revised August 2021 at page 283 said,

“An accused can be convicted on the basis of the testimony of a single competent and credible State witness. However, the credibility and reliability of this witness must be very carefully assessed to see whether it is safe to convict on the basis of his/her testimony alone.”

In the circumstances of the present case, for the reasons given elsewhere above, I find the complainant to have been competent and credible. It is safe to convict the accused on the basis of her testimony alone. Had the trial magistrate been comprehensive and thorough in her judgment, there would have been no doubt about the correctness of the accused’s conviction. I would have confirmed the proceedings as being in accordance with real and substantial justice without having to write this review judgment. Judicial officers must realise that a poorly written and reasoned judgment can have several disadvantages. It can be difficult for the higher court reviewing it or hearing an appeal to understand the reasoning behind the decision. This can lead to confusion and misinterpretation of the lower court’s findings. A judgment that lacks sound reasoning or is poorly articulated is more likely to be overturned. Poorly reasoned judgments can waste judicial resources. Higher courts may need to spend additional time and effort to decipher the lower court’s decision, which can delay the resolution of cases. The quality of judicial decisions affects public confidence in the legal system. Poorly reasoned judgments can undermine trust in the judiciary and the perception of fairness and competence. On the other hand, a well-written and reasoned judgment offers several advantages: It informs the parties (litigants) of the reasons for the decision; it demonstrates the fairness and correctness of the decision; it excludes arbitrariness and bias; it ensures that justice is not only done but is also seen to be done; and it facilitates higher courts in appreciating and examining the issues involved in any case more appropriately.¹

It is my hope that this review judgment will guide the trial magistrate and other magistrates in writing future judgments. The need for rigorous adherence to judicial standards when writing judgments cannot be overemphasized.

¹ Sri Ch. Kishore Kumar, Junior Civil Judge, Pulivendula Judgment Writing, page 6.
<https://districts.ecourts.gov.in/sites/default/files/> Accessed on 24 August 2024.

Since the conviction of the accused was proper, despite the poorly written judgment, there was no miscarriage of justice. I have no issues with the sentence that was imposed on the accused. Therefore, I certify the proceedings as being in accordance with real and substantial justice.

MUREMBA J:.....