

**THE STATE**

**VERSUS**

**THABANI KHUMALO**

IN THE HIGH COURT OF ZIMBABWE  
CHEDA J  
BULAWAYO 29 APRIL 2010

Review Judgment

Dagga

**CHEDA J:** This is a review matter from the Provincial Magistrate Matabeleland North, Bulawayo.

The facts of the matter are that on the 27<sup>th</sup> January 2010, members of the Police force were on patrol at Zenka business centre when they received information that accused had planted dagga at his homestead. Acting upon that information, accused's homestead was searched and they recovered 57 dagga plants with an average height of 1.5m.

He was charged with possession of the said dagga, was convicted and sentenced as follows:

“US\$100 or 5 months imprisonment. In addition 12 months imprisonment is suspended for 5 years on condition the accused does not within that period commit any offence involving cultivation, possession, selling, smoking or distribution of dagga for which is sentenced to a term of imprisonment without the option of a fine. The dagga plants are forfeited to the State.”

There is nothing wrong with the conviction, however, it is the sentence which shocks a reasonable man's conscience.

Dagga is a dangerous drug as it has both disastrous social and health consequences hence the need for it to be controlled by those in the know. Accused was found in possession of 57 plants. These plants, I have no doubt in my mind, that they were for commercial purposes.

Possession of dagga of such a quantity is a very serious offence which attracts a lengthy prison term. Authorities on sentencing are numerous, if the trial Magistrate had cared to inform himself, see *S v Kondo* HH 56/91, and *S v Sibanda* HH 45/88 just to mention but a few.

The trial magistrate had the privilege of seeing the dagga during the trial and therefore is expected to have seen the bundle of accused's harvest. I am of the view that the sight of the bundle coupled with precedents in sentencing should have swayed a reasonable court to impose a harsh sentence. This is the type of case where the accused should have been sentenced to an effective sentence of between 4-6 years imprisonment.

This is one of the most ridiculous sentences which have come before these courts.

In light of the above, I am unable to certify the proceedings as being in accordance with real and substantial justice.

Cheda J.....