

RODRICK DUBE

Versus

T. GWAZEMBA N.O.

And

THE STATE

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 17 MARCH 2011

G Nyoni for applicant
W Mabhaudi for respondent

Criminal Review

NDOU J: The accused was properly convicted by a Lupane magistrate of ten counts of fraud as defined in section 136 of the Criminal Law (Codification and Reform) Act [Chapter 9:23]. Nothing turns on the convictions.

The accused was sentenced to a total of 70 months of which 30 months were suspended. The trial magistrate failed to appreciate that the people who received the proceeds of the fraud were Philani Ncube and Enet Moyo, the so-called ghost teachers whom the accused fraudulently placed on the government payroll. The court did not ascertain how much the accused benefited from the fraud. The court proceeded to sentence the accused on the presumption that he was the sole person who had benefitted from the money. The accused, who was not represented by a lawyer during the trial alluded to this fact but the magistrate did not carry out any enquiry. This fact is pertinent to the accused's moral blameworthiness. The order sought here is for the sentence to be set aside and a fresh sentence be imposed after investigating this issue and its impact on the ultimate sentence. The state does not oppose this application

Accordingly, it is ordered that:

1. The conviction on all ten counts dated 2 November 2010 be and is hereby confirmed.
2. The sentence passed on 4th November 2010 be and is hereby set aside.

3. The matter be and is hereby referred back to the trial magistrate for sentencing afresh after due enquiry as to the actual prejudice the accused caused to the state.

Kamocha J I agree