

THE STATE

VERSUS

POLITE NDLOVU

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 7 MARCH 2013

Review Judgment

CHEDA J: This matter is referred to me after my brother Ndou J who initially reviewed it has since left the bench.

The facts of the case are that:

- “(1) The accused resides at Stand Number 27 Village 3 Ezihwabeni and is self employed.
- (2) The complainant is male adult named Venin Ncube aged 55 years residing at Stand Number 17 Village Ezihwabeni and is self employed.
- (3) On the 24th day of October 2012 at around 1930 hours the accused Polite Ndlovu went to Veni Ncube’s homestead where upon arrival he proposed love to her daughter Sinikiwe Ncube who turned him down.
- (4) The accused got angry took out his box of matches and set the granary on fire, burning two buckets of groundnuts, hoe, ten kilogrammes of round nuts and sixty bundles of thatching grass.
- (5) The value of burnt property is US\$105 and nothing was recovered.

Count two

- (1) The complainant Austine Ndlovu aged 65 years and resides at Stand Number 17, village 3 Ezihwabeni, Figtree and is self employed.
- (2) On the 24th day of October 2012 and at around 20:00 hours the accused person Polite Ndlovu went to church of Christ where the complainant was preaching.
- (3) The accused was told to confess before entering the church; the accused refused and was told to go outside the church.

(4) After the people had departed the accused went back to the church of Christ and set the church on fire by lighting roof of the church. The whole church was burnt down and the value of the property destroyed is US\$990 and nothing was recorded.

(5) The accused actions were unlawful.

I have perused the record and I am also of the opinion that accused's behaviour and conduct is rather unusual to an extent that he may have a mental problem.

Whenever, a judicial officer notices some unusual behaviour on the accused's person he should refer him/her to a suitably qualified professional, in *casu* a Doctor or Hospital for a proper assessment. A judicial officer, irrespective of how well meaning he maybe his opinion on a matter that is outside his scope of training or expertise should not allow it to influence his decision. Such opinions should always be left to properly qualified professionals in their respective fields, see *S v Mwale* HB 87/06; *S v Sikhosana* HB 195/12; *S v Mgemezulu* HB 132/12 and *S v Moyo* HH 63/84..

Magistrates in particular should always bear in mind that by a stroke of a pen, an individual's liberty maybe unjustifiably taken away, where ordinarily it should not be.

For the above reasons I concur with the learned judge that accused's behaviour and conduct could have been as a result of a mental disorder.

In light of this the following order is made:

Order

- (1) The conviction is set aside
- (2) The matter is referred back to the court *a quo* for a medical assessment with a view of sending the accused for a medical check-up.

Cheda J.....

Mutema J agrees.....