

DANIEL CHIMUNHU
versus
STATE

HIGH COURT OF ZIMBABWE
NDEWERE J
HARARE, 05 November 2013

Application for leave to appeal in person

(IN CHAMBERS)

NDEWERE J: The above is an application for leave to appeal against sentence by Daniel Chimunhu in person.

The accused pleaded guilty for contravening s 157(c) of the Criminal Law (Codification and Reform) Act [*Cap 9:23*]. He was found with a total of thirty dagga plants measuring an average of two metres in height without a permit.

He was found guilty in accordance with his own guilty plea and sentenced to 11 months imprisonment with labour, with the two months being suspended for 5 years on condition he does not commit a similar offence.

The accused has now applied for leave to appeal in person. According to the record, he is currently on bail pending appeal.

We have looked at similar offences involving possession and cultivation of dagga. From the cases available, the accused does not have prospects of success on appeal. Cases of cultivation are viewed seriously by the courts because they exhibit a commercial element.

In *S v Kaseke* HH 103/92, a first offender of 45 years who cultivated 22 plants of dagga of a height of 2 ½ m in his garden and was sentenced to an effective 3 years had his sentence reduced to 12 months imprisonment, with 6 months suspended. So for 22 plants, the accused still served an effective prison term.

In *S v Zimondi* HB 27/83, a 45 year old first offender pleaded guilty to cultivation and possession of 150 000 plants. The case was referred to the High Court for sentence and he was sentenced to an effective 10 years in prison.

In *S v Ncube* HB 114/94, a 71 year old first offender cultivated 44 dagga plants with an average height of 2.2m. He was sentenced to 2 years in prison, with 6 months suspended. He appealed. The appeal court said because of the accused's advanced age they would

reduce his sentence and they substituted the lower court's sentence with a sentence of 2 years, with 18 months suspended.

So despite his advanced age, the accused still served an effective term of imprisonment for cultivating 44 plants.

This means accused Daniel Chimunhu's sentence is not excessive. He is a young first offender who cultivated 30 plants. A sentence of 11 months, with 2 months suspended is in accordance with real and substantial justice. He therefore has no prospects of success on appeal.

The application for leave to appeal in person is therefore denied and the lower court's sentence is confirmed.