

THE STATE

Versus

SAMUEL ZENGEYA MLAMBO

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 18 OCTOBER 2012

Review Judgment

CHEDA J: The accused was charged with fraud as defined in terms of section 136 of the Criminal Law Codification and Reform Act [Chapter 9:23].

He pleaded not guilty but was nonetheless convicted and sentenced 12 months imprisonment which was wholly suspended on condition accused restitutes complainant in the sum of US\$1500-00 by the 31st of August 2012.

The facts of the case are that complainant bought a car from accused for Z\$15000-00 on the 2nd October 2004. When called upon to deliver the said vehicle accused failed to do so as he stated that the car in question belonged to someone else. Thus, fraud was committed.

The learned scrutiny magistrate noted that the order of retribute was not legally justifiable. He wrote a minute to the learned trial magistrate querying his decision, to which he responded as follows:

“For the attention of G. Tagu

RE: STATE VERSUS SAMUEL ZENGEYA MLAMBO: CRB ENT 156/11

I acknowledge receipt of your scrutiny minute dated the 5th of June 2012. I arrived at the figure of US\$1 500-00 after enquiring from the complainant how much the Zimbabwean dollar equivalent would have (sic) in today’s currency. The prejudice suffered was money sufficient to purchase a vehicle. Thus I found the US\$1 500-00 reasonable also looking at the value of second hand vehicles on the current market.

(signed)
T. CHIMISO
MAGISTRATE”

I am in agreement with the learned trial magistrate that the rate used is not legally correct.

During the economic problems Zimbabwe was going through, a lot of foreign currency dealers mushroomed and their emergency resulted in a free-for-all foreign currency exchange rates. Despite all this confusion, the Reserve Bank of Zimbabwe remained effectively in control by determining the correct and legal exchange rate on their currency vis-a-vis other currencies. In view of this, nobody was and is allowed to rely on any other rate of exchange other than the Reserve Bank of Zimbabwe.

It was, therefore, improper for the learned trial magistrate to have sought the exchange rate from the complainant, who is, but, an interested party. It is for that reason that he should have sought an official foreign currency exchange rate from the Reserve Bank of Zimbabwe as it is the only authority to determine such rates.

The learned trial magistrate, therefore, misdirected himself in this matter. In that regard while the conviction is proper, the sentence is not.

This is my order:

- (1) The conviction is confirmed;
- (2) The sentence is set aside, and
- (3) The matter is returned to the same magistrate for re-assessment of the sentence after assessing the official foreign exchange rate at the time of the offence.

Cheda J.....

Kamocha J agrees.....