

THE STATE

versus

MARTIN MAPONDA

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO22 MAY 2014

Criminal Review

MAKONESE J: The accused a 29 year old father with one child was charged with fraud as defined in section 136 of the Criminal Law (Codification and Reform) Act [Chapter 9:23]. He was convicted on his own plea of guilty and sentenced to 18 months imprisonment of which 6 months was suspended for 2 years on condition of good behaviour. A further 6 months imprisonment was suspended on condition of restitution. The effective sentence was therefore 6 months imprisonment.

The facts of the matter as set out in the state outline are as follows:-

- “1. The complainant in this matter is Edgars Stores represented by Priscillah Bishawu of house number MQ 174 Luwellin Barracks, Bulawayo, a Sales Section Manager.
2. Accused is a male adult who resides at house number 58048/4 Mabutweni, Bulawayo and is unemployed. He was employed by Edgars Stores.
3. On the 18th, 22nd and 26th and 28th of November the accused who was employed by Edgars Stores as cashier by then purchased clothes on account number 0501183080 which was Webster Chipunza’s (accused’s friend) account without his knowledge and authority.
4. A statement invoice was sent to Mercy Mhuru (wife of Webster Chipunza) who happened to be the next of kin informing her that the account was overdue and payment was needed.
5. Mercy approached Edgars’s Credit section whereupon arrival she saw Pauline Yeukai Murima and queried that her husband never bought clothes from the store during the period in question and that he was in South Africa. She also stated that the account was cleared in August 2013 and that no purchase had been made hence the account was not in arrears.
6. Investigations were carried out and it was established that the accused purchased clothes from the said account and failed to pay the instalments

thereby causing Edgars Stores to suffer prejudice of \$435.00”

In this matter nothing turns on the conviction. It is the sentence, which in my view is excessive in all the circumstances of the case. The accused refused to perform community service and even after the purpose of community service was explained, the accused stuck to his guns and flatly declined to perform the same. In the event, the trial magistrate’s options were narrowed down. The magistrate’s view was that a non-custodial sentence was not appropriate taking into account the fact that the accused stole from his employer. He stole out of greed rather than need. The accused’s moral blameworthiness was high in that he breached the trust bestowed upon him by his employer. The mitigating factors were balanced against the aggravating factors of the case and the court *a quo* took the view that since accused refused to perform community service the only appropriate sentence was a custodial sentence, a portion of which was suspended on condition of good behaviour and restitution. The effective sentence of 6 months in my view is rather harsh and excessive regard being had to the fact that accused pleaded guilty and offered restitution. Whilst the established principles of this court are that the court will not interfere with a sentence simply because it would have imposed a different sentence, this court has a discretion to interfere with a sentence where the sentence is patently excessive so as to induce a sense of shock. I am mindful of the fact that the accused found himself in the position he is now because of his arrogant stance in refusing to perform community service.

I must emphasise, however, that the sentence must fit the crime and the offender. The interests of society as against those of the accused must be balanced to achieve justice and fairness.

In this matter I have considered that a fine would not have been an appropriate penalty because of the aggravating features of the case. I would however, alter the sentence as follows:

1. The conviction is confirmed.
2. The sentence of 18 months imprisonment is set aside and substituted with the following:

“12 months imprisonment of which 6 months imprisonment is suspended for 5 years on

condition accused is not within that period convicted of any offence involving dishonesty for which he is convicted and sentenced without the option of a fine. A further 3 months imprisonment is suspended on condition of restitution. Effective sentence 3 months imprisonment.”

Makonese J.....

Takuva J agrees.....