

JAKUVOSI MAJONI
versus
THE STATE

HIGH COURT OF ZIMBABWE
KAMOCHA AND MOYO JJ
BULAWAYO 26 OCTOBER 2015 AND 3 MARCH 2016

Criminal Appeal

C. Dube for appellant
K. Ndlovu for respondent

MOYO J: The appellant was convicted by the Regional magistrate sitting at Bulawayo of criminal abuse of office as defined in section 174 (1) of the Criminal Law Codification and Reform Act [Chapter 9:23]. He was sentenced to forty eight months imprisonment with twelve months imprisonment suspended on the usual conditions and a further six months suspended on condition of restitution.

Dissatisfied with both conviction and sentence, he then approached this court. The gist of the notice of appeal is that the learned magistrate misdirected himself in finding that there had been proof of the charges leveled against appellant beyond a reasonable doubt yet the evidence of the state witnesses was compromised by lack of credibility and collusion. The notice of appeal seems to point towards that there was a misdirection on the part of the learned magistrate who believed witnesses who otherwise should not have been believed. I have not quoted the notice of appeal verbatim as it is defective in that it is drafted in a manner that heads of argument should be, a notice of appeal lays out the grounds not the arguments. At the hearing of appeal, we dismissed it in its entirety and stated that our detailed reasons would follow, here are they:

It is our considered view that the appellant makes a bold assertion on the lack of credibility on the part of the witnesses that were called. The appellant further makes a bold assertion on the issue of collusion on the part of the state witnesses.

It is trite law that an appeal court will not ordinarily delve into the issues of credibility or otherwise of the state witnesses.

An appeal court will interfere with the findings of the trial court on the facts where there is a clear misdirection on the part of the court *a quo*.

The appellant's first qualm with the findings of the trial court is that the essential elements of the offence of criminal abuse of office were not satisfied. In our view all the essential elements of the offence were satisfactorily met as we will show when we go through the evidence as adduced by the court.

The facts of this matter are that the appellant abused his position as a manager at GMB by entering into agreements that were not in terms of procedure with his girlfriend and in the process also abused a customer's account. It is also alleged that he would convert cash transaction into credit transaction after pocketing the funds. He would do this with his girlfriend.

Buhle Mlilo an employee at GMB told the court that she had been informed that the appellant had used the Mahla store account without the owner Mr Mandizvidza's authority. She heard that from Mr Mandizvidza she told the court that she did not see appellant using the account but that one of the documents to claim maize was signed by the appellant. She also confirmed that the appellant did make payments into the Mahla Store account after his transfer to Gwanda.

Mr Joseph Virima also told the court that of the documents for dispatch, voucher number 731431 was signed by the appellant implying that he was the customer. It was not disputed by the appellant that he did sign as the customer there when in fact he was not. He also told the court that the appellant abused his authority by converting Chenesai's cash transactions and making it look like Mahla store had bought goods on credit when in fact that was not so.

Robert Mandizvidza the owner of Mahla store also told the court about the unauthorized usage of his account and that upon confrontation appellant said he had made a payment plan and indeed made some payments towards settling the account.

Appellant himself in his defence outline does not dispute that he did offer to pay the sums due to the Mahla account but he says he did so to avoid problems. We thus cannot find any fault with the evidence as analysed by the trial court. Chenesai also told the court that she bought maize at GMB and gave the funds to the accused person. The accused person admits to the fact

that Chenesai did use the Mahla store account on credit but denies any knowledge as to how such an arrangement came about. He however says he authorized the first such transaction and yet he was not aware how Chenesai was authorized to buy on the Mahla store account?

He also confirmed that while Chenesai bought maize meal on behalf of Mahla store, he knew that the maize was not being taken to Mahla store but to Mberengwa. It does not make sense that the appellant would allow his girlfriend to buy on credit on behalf of Mahla store, an arrangement between the girlfriend and Mahla Store which he (appellant) was not privy to, but he would nonetheless authorize such transaction? To make matters worse the maize was destined for, Mberengwa to appellant's knowledge and not to Mahla store? Why would the appellant if he was not abusing his authority allow his girlfriend to just use another customer's account without verification that indeed the customer has authorized her?

This court will only interfere with the findings of the court *a quo* where a clear misdirection has been shown. The sum total of the evidence in the court record concludes guilt on the part of the appellant without any reasonable doubt. To say that the trial court should have found otherwise is not supported by the contents of the court record.

ZIYAMBI JA in the case of *Chimbwanda v Chimbwanda* SC 28/02 stated thus:

“It is trite law that an appellate court will not interfere with the findings of fact made by a trial court and which are based on the credibility of witnesses. The reason for this is that the trial court is in a better position to assess the witnesses from its vantage point of having seen and heard them----. The exception to this rule is where there has been a misdirection or a mistake of fact or where the basis upon which the court *a quo* reached its decision was wrong.”

We are satisfied that no misdirection has been shown in the decision of the court *a quo* and that the conviction resulting from the trial court's assessment of the issues before it is thus safe.

The appeal against conviction is thus unfounded. We also found that nothing turns on the sentence as no misdirection has been shown on the part of the trial court in sentencing the appellant.

It is for these reasons that we dismissed the appeal in its entirety.

Mcijo-Dube and Partners, appellant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners

Kamocha J agrees.....