

BRIGHTON CHINDONDONDO
versus
THE STATE

HIGH COURT OF ZIMBABWE
HUNGWE & BERE JJ
HARARE, 1 July 2014

Criminal appeal

C K Mutevhe, for the appellant
T Mapfuwa, for the respondent

BERE J: The appellant in this case was jointly charged with two other accused persons of the crime of contravening s 126 of the Criminal Law (Codification and Reform) Act [*Cap* 9:23] and s 131 of the same Act.

At the conclusion of the trial the appellant was acquitted of the main charge but convicted of the offence of receiving stolen property knowing it to have been stolen and sentenced to 15 months imprisonment 6 months of which were suspended on the usual conditions of future good behaviour.

This appeal is against both conviction and sentence.

It is the appellant's contention that the evidence led and accepted by the court did not support the conviction.

The respondent has decided not to support the conviction and has accordingly filed the appropriate notice in terms of s 35 of the High Court of Zimbabwe Act [*Cap* 7:06].

It is important to appreciate that in order for the conviction to stick it should have been proved beyond reasonable doubt that the accused did not only purchase stolen goods, but that when he did so he knew or ought to have known that the goods had been stolen.

Therein lies the challenge with the appellant's conviction in this case.

The first major challenge with this case is that the owner or person representing the owner of the stolen goods, Albert Tinashe Zigga testified that as far as he was concerned he had not recovered the goods stolen from the complainant's shop.

The witness was categorical in his testimony that this was so. If the owner of the goods recovered in the hands of the appellant has not identified the goods it becomes impossible to state with certainty that the goods found in the possession of the appellant emanated from the complainant's shop which was broken into. This is particularly so if regard is had to the appellant's business of buying and selling goods.

As correctly observed by the State counsel, there is clearly no link between the recovered exhibits and the appellant.

Although the appellant admitted to have purchased the items which were similar to those stolen from the complainant, there was no further probing made to show that at the time the appellant purchased the items, he knew or ought to have known that those items were stolen.

It was incumbent upon the prosecution to rebut the explanation given by the appellant that he bought the property in question at a public place and without the knowledge that such goods were tainted.

In my view, the explanation given by the appellant was reasonable in the circumstances and he ought to have been given the benefit of doubt by being acquitted.

Consequently the conviction is set aside and sentence is quashed and the appellant is found not guilty and acquitted.

BERE J _____

HUNGWE J agrees _____

Messrs Mugadza, Chinzamaba and Partners, appellant's legal practitioners
The Criminal Division of the Attorney General, respondent's legal practitioners