

NYARADZO MAGWENZI  
versus  
THE STATE

HIGH COURT OF ZIMBABWE  
HUNGWE and MANGOTA, JJ  
HARARE, 14 October 2014

### **Criminal Appeal**

*A.R. Chizikani*, for the appellant  
*R. Chikosha*, for the respondents

MANGOTA J: The parties to the present proceedings agreed between them that the conviction of the appellant was not safe. The court agrees with them.

The appellant was charged with, tried and convicted of theft as defined in s 113(1)(a) and (b) of the Criminal Law (Codification and Reform) Act [*Cap 9:23*]. She was sentenced to 36 months imprisonment all of which was suspended on the following conditions:-

- (a) 12 months imprisonment were suspended for 5 years on condition of good behaviour;
- (b) 12 months imprisonment were suspended on condition the appellant restituted the complainant in the sum of \$17000 – and
- (c) 12 months were suspended on condition the appellant performed 420 hours of community service at Kuwadzana Municipal Police Station.

The State allegations were that, during the period which extended from 6 October, 2012 to May, 2013 and at Stenhop Investments which is in Workington area, Harare, the appellant, who was employed as a Sales and Marketing Assistant, did steal \$28 000 which belonged to Stenhop Investments which were her employers.

Two witnesses testified against the appellant. None of them was able to link the appellant to the offence. The video clip which was produced as part of the evidence for the State did not carry the matter any further than where the witnesses had left it. The witnesses were not only contradictory but they were also thoroughly incredible. The court found it hard, if not impossible, to appreciate the reasons which persuaded the trial magistrate to conclude that the State's case was established when it was not.

The appellant's appeal was against conviction only. The respondent conceded that the evidence which the State adduced did not prove the guilt of the appellant. The concession is properly made, in the court's view. The State did not establish the guilt of the appellant at all. The conviction is, therefore, unsafe and it cannot be allowed to stand.

The court has considered all the circumstances of this case. It is satisfied that the appellant proved his innocence on a balance of probabilities. It is, in the result, ordered as follows:

- (a) that the appeal be and is hereby upheld;
- (b) that the conviction of the appellant be quashed and the sentence set aside;
- (c) that the appellant be and is hereby found not guilty and is acquitted of the charge.

HUNGWE J: agrees .....

*A.R. Chizikani Legal Practitioners, appellant's legal practitioners*  
*National Prosecuting Authority, respondent's legal practitioners*