

THE STATE  
versus  
TAPIWANASHEMUCHINERIPI

HIGH COURT OF ZIMBABWE  
MAWADZEJ  
HARARE, 30 March 2015

### **Criminal Review**

MAWADZEJ: The accused was convicted of 64 counts of Fraud as defined in s 136 of the Criminal Code [*Chapter 9:23*].

The accused was employed as an Operation Manager and his duties included *inter alia* management of accounts records and collection of cash from clients. During the trial accused was jointly charged with Amon Shumba who was employed as the Managing Director of the complainant. Amon Shumba was discharged at the close of the State case.

The accused who virtually admitted the commission of the offences save for blaming accused 2 was found to be untruthful and was duly convicted on all the 64 counts.

The facts proved are that during the period expending January 2013 to August 2014 accused collected outstanding payments from complainant's client Tynatex Distributors (Pvt) Ltd. The complainant Guard Tech Security Service is a duly registered company which provides security services. The accused collected a total of US\$64 722 from Tynatex Distributors (Pvt) Ltd but only deposited US\$5 272 thus converting US\$ 59 450 to his own use of which nothing was recovered. In order to cover up the fraud accused would write correct amounts on clients' copy receipts but insert lesser amounts on the duplicate and fast copies which were retained for company records. The accused would convert the difference to his own use. On other occasions accused would, after collecting cash from Tynatex Distributors (Pvt) Ltd issue top copy receipts with correct amounts to Tynatex Distributors and proceed to falsify the bottom copy receipts by writing names of other clients who would have transferred money into complainant's bank account and convert the total amounts to his own use. The matter came to light when complainant carried out routine inspection on the financial records. In order to verify the anomalies receipts issued to Tynatex Distributors were

availed and the fraud was detected.

The evidence against the accused is overwhelming and accused proffered no defence at all. The conviction in respect of all 64 counts is confirmed.

The sentence imposed by the trial court is manifestly and shockingly lenient.

The accused was sentenced to 60 months imprisonment of which 12 months imprisonment were suspended on the usual condition of good behaviour. A further 24 months were suspended on condition pays restitution in the sum of US\$ 59 450 through the clerk of Court Harare by 29 May 2015. The remaining 24 months were suspended on condition performed 840 hours of community service at Sunningdale 1 Primary School.

While I have no qualms with the total sentence imposed and the suspension of part of the sentence on condition of good behaviour and restitution I have serious difficulties in appreciating the imposing of community service for such a serious offence involving actual prejudice of US\$59 450.

In mitigation the 39 year old accused who is married with 4 children told the court that he looks after his mother and grandmother who are both chronically ill. The accused had savings of US\$200. The accused strangely submitted that he did not benefit at all from the proceeds of the crime. There are no special mitigatory factors in this case.

There is no doubt that accused committed a serious offence. The commission of the offence involves not only an elaborate plan but gross abuse of trust. The accused committed 64 counts of fraud for the period extending from January 2013 to August 2014, a total of 1 year 8 months. Accused was persistent in his criminal conduct. It is clear that he did bite the hand which fed him and derived benefit from his criminal conduct. The accused's moral blameworthiness is very high and the aggravating factors far outweigh the mitigatory factors. This is a proper case where a deterrent sentence should have been imposed. See *S v Ndlovu* 1996 (2) ZLR (H).

In my view this would have been achieved by imposing an effective custodial sentence of at least 24 months imprisonment. Community service is wholly inappropriate in this case. Such an approach would cause the public to lose confidence in our criminal justice system.

I am therefore for the reasons stated unable to certify the proceedings as in accordance with real and substantial justice. I withhold my certificate.