

FARAI MAHUNI
versus
THE STATE

HIGH COURT OF ZIMBABWE
CHATUKUTA, TAGU JJ
HARARE, 15 October 2014

Criminal Appeal

E. Muhlekiwa, for the appellant
I. Muchini, for the respondent

TAGU J: On the 15th October 2014, after reading documents filed of record and hearing counsels, we delivered an *ex-tempore* judgment dismissing an appeal against sentence. The counsel for the appellant has requested for written reasons for judgment. The following are our reasons.

The appellant, a 31 year old first offender pleaded guilty to, and was convicted of, one count of contravening s 170(1)(b) of the Criminal Law (Codification and Reform) Act [*Cap 9:23*] –Bribery. He was sentenced to 18 months imprisonment of which 9 months imprisonment were suspended for 5 years on the usual condition of future good conduct. Effectively the appellant was sentenced to 9 months imprisonment without an option of a fine.

The papers which are filed showed that the appellant was appealing against sentence only. The conviction was in order and it was hereby confirmed.

The facts which were common cause were that on the 3rd of August 2010 at about 0900 hours the appellant was driving a Commuter Omnibus (kombi) registration number ABJ 0887 from Masvingo towards Harare. When he got to the 142 kilometre peg along Harare-Masvingo road, he was stopped by Gabriel Tanga, a police officer who was in charge of the roadblock site. The appellant slowed down and offered the police officers US\$ 5-00. When the police officers ignored the money, the appellant threw the money on the tarmac and drove off towards Harare. He was pursued by Constable Kamutsamombe and was arrested at Dirozvi about 2 kilometres from the roadblock site. On inspecting the Commuter Omnibus it was discovered that he was not supposed to be using that route. He was then arrested and

charged with the offence of bribery.

The grounds of appeal were that-

1. The magistrate misdirected himself by imposing a custodial sentence given the fact that appellant was a first offender who pleaded guilty;
2. The magistrate paid lip service at all to the appellant's mitigating factors, and failed to consider community service;
3. That the sentence induces a great sense of shock, given the fact that an amount of \$5.00 was involved; and
4. That the magistrate failed to appreciate that a short term of imprisonment is a rigorous and severe form of punishment.

The appeal was opposed by the respondent.

Mr *Muchini*, for the respondent, submitted that Bribery of a public officer was a serious offence inviting a custodial term of imprisonment. He further, submitted that the effective prison term of 9 months did not induce a sense of shock. The appellant was putting the lives of his fare paying passengers at risk by refusing to have his vehicle inspected. The appellant was putting the image of the ZRP Organisation into disrepute by throwing a \$ 5 .00 note at the officers as a bribe. He argued further, that the value of the consideration offered to the police officers was inconsequential. Rather, it is the effect of appellant's conduct that the trial court correctly took into consideration. Finally, he argued, and rightfully so, that the rule that prison sentences within the 24 months range qualify for community service is not absolute. Each case has to be determined on its own facts. *In casu*, a short custodial term of imprisonment to deter appellant and like- minded offenders from bribing the police at road blocks was called for.

The respondent referred to the cases of-

1. *S v Paweni and ors* 1985 (2) ZLR 133 (S) – persons who bribe public officials will be punished as harshly as public officials who receive bribes.
2. *S v Narker and ors* 1975 (1) SA 583 – bribery is a corrupt and ugly offence, the courts view it with abhorrence.

In casu, the trial court was alive to the effects of bribery. He summed it up when he said in his reasons for sentence that-

“.....Accused's conduct shows a disrespect of the law. Police Officers enforce road

traffic laws to protect accused himself, his passengers, the vehicle driven by accused and other road users. Now accused's conduct shows that he does not care about all that to the extent of having the courage to bribe Police Officers on duty thereby making the execution of their duties at road blocks academic. Accused resorted to the use of money to sway Police Officers from their principal duties when manning a road block. Accused's conduct also tends to bring the reputation of the Police Officers into disrepute as corrupt officers who cease to concentrate on their principal duties at the sight of a dollar thrown at them. That, however, was not the case in this matter as the Police Officers stood their ground by refusing to be bribed and they followed up (*sic*) accused resulting in his arrest for this crime.

Bribery is an offence which is difficult to detect and in this case the Police Officer concerned has to be applauded for his refusal to be bribed while on duty. The offence which accused is facing if not curbed has far reaching consequences which are not in the best interest of society as it tends to paralyse the law enforcement agents leaving society vulnerable to problems. (*sic*)

A lot of lives have been lost on our roads, many people have been maimed and valuable motor vehicles damaged on our roads. Hence the need for Police road blocks on our roads to enforce road traffic laws and ensure safe travelling in the process. That is the noble police exercise (*sic*) which accused intended to frustrate through bribery on the day in question

Yes, the US \$ 5.00 note used to bribe the officer appears to be a small amount of money but it has far reaching consequences if regard is had to the implications of bribery as detailed by the court.

At the end of the day, the court looks at accused's conduct with great abhorrence and his moral blameworthiness remains very high. The amount of money involved may appear small on the face of it but what remains glaringly clear is that accused is facing a fairly serious crime.

In the spirit of bringing sanity to our roads by road users, the court is of the respectful assessment that fines and community service appear to be unsuitable as they tend to trivialise this otherwise serious offence. Community service on an accused who has the courage to bribe a Police Officer on duty will tend to bring this noble (*sic*) scheme into disrepute in my view,

It is the court's final assessment that an effective custodial sentence with a substantial portion suspended will meet the justice of this crime. This sends a loud and clear message to our society that bribery is some kind of cancer which should not be tolerated in our society"

The reasoning by the court *a quo* cannot be faulted. There is therefore, no misdirection committed by the court warranting this court to interfere with the sentence imposed. The sentence did not induce a sense of shock at all. It was not capriciously imposed. The trial magistrate went at length to demonstrate why an effective custodial sentence was called for. We are therefore, unable to interfere with the trial court's sentencing discretion which we find to have been judiciously exercised.

In the result, it is ordered that-

1. The appeal be and is hereby dismissed.

CHATUKUTA J agrees

Mahuni & Mutatu, appellant's legal practitioners
Prosecutor-General's Office, respondent's legal practitioners