

Judgment No. S.C. 71/98
Crim. Appeal No. 834/97

OMEGA MANJERA v THE STATE

SUPREME COURT OF ZIMBABWE
GUBBAY CJ, McNALLY JA & MUCHECHETERE JA
HARARE, MAY 12, 1998

T M Masendeke, for the appellant

M Zimba, for the respondent

GUBBAY CJ: The appellant was charged in a magistrate's court with a contravention of s 3(1) of the Prevention of Corruption Act [*Chapter 9:16*]. The allegation was that on 13 July 1995, and at Day and Night Driving School, Masvingo, acting as an agent, he corruptly accepted from Yuda Banda, the complainant, the sum of \$700 in order that the latter would obtain a certificate of competency without undergoing any road tests at Masvingo Vehicle Inspection Depot ("V.I.D."), as required by law.

To this charge the appellant pleaded not guilty. His defence was a total denial of the receipt of the money and of having had anything to do with the complainant. He protested that the nature of his employment as a driving instructor, though requiring him to take clients to the V.I.D. to be tested, did not make it possible for him unlawfully to procure a driving licence.

In finding the charge to have been proved, the magistrate imposed upon the appellant a sentence of fifteen months' imprisonment with labour, of which period six months were conditionally suspended for five years. Dissatisfied with both the propriety of the conviction and the magnitude of the sentence, the appellant now seeks relief from this Court.

The State case rested on the evidence of the complainant and of his work colleague, Daniel Chuma. Both were accomplices who had been convicted and sentenced prior to the date of the appellant's trial.

It was not in dispute that the complainant had been issued with a driving licence (a certificate of competency) unlawfully by one Moses Nyoni, a vehicle inspector at the Masvingo V.I.D. Nor was it denied that in obtaining the licence, Chuma had acted on the complainant's behalf. The crucial question to be decided was whether it was the appellant or another official at the V.I.D. who had acted as agent for the complainant and Chuma in the procurement of the licence.

The complainant testified that Chuma had introduced him to the appellant as the person able to obtain a driving licence for him illegally. He met with the appellant outside OK Bazaars supermarket at Masvingo and was informed that the licence would cost him \$700. On that occasion he had only \$400 available and did not pay the appellant any money. A few days later he handed \$700 to Chuma on the undertaking that the sum would be paid to the appellant. Shortly thereafter he received from Chuma a driving licence made out in his name.

Chuma's corroborative evidence was to the following effect: He is related to the owner of Day and Night Driving School, and was acquainted with the appellant. He offered to assist the complainant who was desperate to obtain a driving licence. So he introduced the complainant to the appellant. The payment sought by the appellant was \$700. The complainant gave him the required amount and he handed the money to the appellant. Later he received from the appellant a driving licence made out in the name of the complainant. This he handed over to the complainant.

The appellant denied having had any contact with either the complainant or Chuma. He was unable to explain why the two witnesses should involve him in the corruption and not simply aver that the licence had been obtained directly from Nyoni, who like them had been convicted of the offence.

The magistrate appreciated that it was competent to convict where the evidence of one accomplice corroborated that of another. But he was alive to the danger of relying on accomplice evidence, and accordingly subjected the State case to scrutiny. He found that there was no reason for the two witnesses to falsely incriminate the appellant; they had absolutely nothing to gain by so doing. He was convinced that their version of the unfortunate affair was the truth. In his own words:-

“... the witnesses gave their evidence well. They did not impress the court as persons who were lying. Indeed they could have been credible and yet lying. After all they are convicts. However, it appeared they were being honest. The court takes note of how emotionally touched the first witness was. He said he had taken a chance but knew that the law might catch up with him. ...

In the final analysis, the totality of the story is that the court accepts the two witnesses' evidence. They gave it well, they were corroborative of each other, they got the licence they wanted and they knew their contact."

In my view, the conviction of the appellant is unassailable. A reading of the record confirms the magistrate's findings of credibility and his justification for rejecting the defence case.

Mr *Masendeke*, who appeared for the appellant, felt unable to advance any meaningful submissions against sentence. I am not surprised. The appellant was convicted of a serious and prevalent offence – one difficult to detect and eradicate. A deterrent punishment was called for in the interests of society. It was this the magistrate imposed.

It was essentially for these reasons that at the conclusion of the hearing the appeal was dismissed in its entirety.

McNALLY JA: I agree.

MUCHECHETERE JA: I agree.

Muzenda & Partners, appellant's legal practitioners