

DISTRIBUTABLE (53)

Judgment No. S.C. 84/2001
Crim. Appeal No. 165/98

GEORGE CHINDOMU v THE STATE

SUPREME COURT OF ZIMBABWE
EBRAHIM JA, CHEDA JA & MALABA JA
HARARE, SEPTEMBER 18 & 20 & OCTOBER 8, 2001

A Muchadehama, for the appellant

N Mushangwe, for the respondent

MALABA JA: On 8 May 1998 the appellant was convicted on his own pleas of guilty of ten counts of theft and two counts of fraud. The total amount stolen by the appellant was \$1 908 775.60, of which \$1 226 404 was recovered. He was sentenced on 15 May to sixteen years' imprisonment with labour of which nine years were suspended on condition restitution was made to the complainant in the sum of \$681 902.31 by 31 December 1999.

On 20 January 1999 the appellant was granted leave to appeal against sentence out of time. The ground of appeal is that the sentence is manifestly excessive so as to induce a sense of shock. The respondent has conceded the point made by the appellant and agreed that the sentence of the court *a quo* be set aside and substituted with a sentence of imprisonment, one part of which is suspended on the condition of restitution and another on the condition of good behaviour.

I set out the facts in brief. The appellant is a first offender aged thirty-three years, married with six children. He was employed by the National Merchant Bank (“NMB”) as a supervisor in the treasury department. On the ten occasions he stole from his employer the appellant transferred various sums of money from the Exchange Profit and Loss Account and Suspense Account. He credited an account held by his sister with the Bank with the stolen money. A total of \$308 306.31 was stolen by the appellant from his employer in this way between 24 April and 8 November 1995. He later withdrew the money and used it.

To commit the two counts of fraud the appellant raised cheque requisitions in the sums of \$850 000 and \$750 000 in favour of two customers of the Bank. He misrepresented to the two signatories that the money was due and payable to the payees. He later deposited the one cheque into an account held by him with one bank. The other cheque was deposited into an account held by a relative with another bank.

It is clear from these facts that the offences committed by the appellant are of a serious nature deserving to be punished by a long term of imprisonment. The commission thereof was carefully planned and premeditated, being persisted in for a long time. Notwithstanding these aggravating features, we consider that the concession made on behalf of the respondent properly took into account the cumulative effect of the mitigatory features of the case. A substantial amount of the stolen money was recovered before conviction. Although the total amount stolen by the appellant may appear considerable, its value in real terms is much lower due to

inflation. We were told, and the respondent did not dispute it, that the appellant has paid \$270 000 towards restitution of the sum of \$681 902.31.

The appeal therefore succeeds. The sentence imposed by the court *a quo* is set aside and in its place substituted the following sentence:

“Twelve years' imprisonment with labour of which five years' imprisonment with labour is suspended on condition the accused makes restitution to the complainant through the Registrar of the High Court, Harare, in the sum of \$681 902.31 by 31 September 2001. Of the remaining seven years' imprisonment with labour three years' imprisonment with labour is suspended for three years on condition the accused does not within that period commit any offence involving dishonesty for which he is sentenced to imprisonment without the option of a fine.”

EBRAHIM JA: I agree.

CHEDA JA: I agree.