

ADONIA MUZVODZIWA
versus
THE STATE

HIGH COURT OF ZIMBABWE
CHATUKUTA & TAGU JJ
HARARE 24 SEPTEMBER 2014

Criminal Appeal

F Murisi, for the appellant
E Mavuto, for the respondent

TAGU J: After reading documents filed of record and hearing counsels, we dismissed this appeal. We gave an ex-tempore judgment. Counsel for the appellant has requested written reasons for our decision. These are they.

The appellant was charged with, and was convicted after a contested trial on a count of theft of trust property as defined in s 113 (2) (e) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. He was sentenced to 54 months imprisonment of which 12 months imprisonment were suspended for 5 years on the usual conditions of good behaviour. A further 30 months were suspended on condition he restitutes the complainant in the sum of US\$ 26 400-00 through the clerk of court Harare.

The appellant noted an appeal to this court against both conviction and sentence.

The facts as presented by the state were that the appellant was employed by the complainant, a company known as Extreme Titivate Shops, as a messenger. His duties involved cash withdrawing, cash depositing and collecting bank statements. He was to hand over the money withdrawn to one Chipu Mandangu who was employed by the complainant as an administrator. On several occasions the appellant withdrew some money but did not hand it over to Chipu Mandangu. He converted a total of US\$ 26 400-00 to his own use. In order to cover up the theft, he obtained bank statements, erased the transactions and presented a scanned statement showing forged amounts. The offence was discovered by the complainant when he attempted to withdraw cash and failed because the bank discovered that

the complainant's signatures had been forged. Of the total of US\$ 26 400-00 stolen nothing was recovered.

At the hearing of the appeal Mr *E Mavuto* made a concession, and was not supporting the conviction in terms of s 35 of the High Court Act [*Chapter 7:06*]. The basis of the concession was that there was no proper handover – takeover of the money between the appellant and Chipo Mandangu. Mr *Mavuto* was of the view that the money could have been stolen by Chipo Mandangu. His concession did not find favour with this court.

The evidence of Janet Tamangani the Director, Chipo Charity Mandangu the Administration Officer and the appellant himself showed beyond doubt that the appellant was the sole person who was responsible for depositing company money, withdrawing company money and obtaining bank statements. The appellant was not denying that he was the one who withdrew all the money alleged to have been stolen. His defence was that he handed all the money to Chipo Mandangu.

The appellant on one hand admitted having withdrawn the money in question, but on the other hand said he would withdraw the money in the presence of Jane Tamangani. His evidence was refuted by the witnesses.

The following discrepancies proved beyond doubt that the appellant was responsible for the disappearance of the money. All the withdrawal slips and some bank statements contained the appellant's details inside or at the back proving that he dealt with such transactions.

The offences were committed over a period of time from the January 2013. Exh 1, the bank statement dated 14 May 2013 showed that the appellant withdrew various sums of money.

On 23 of April 2013 the Bank Manager at NMB Angwa Street Branch, Harare, discovered the forged withdrawal slip when the appellant was trying to withdraw a sum of US\$ 1 700-00. The appellant scanned bank statement Exh 2, for the period 2 April to May 2013 and gave it to Chipo Mandangu purporting that it was a genuine bank statement. When the offence was discovered the appellant was searched and he was found in possession of the original Bank Statement Exh 3. A comparison of the figures on both statements showed that the figures were not tallying. On the original statement there was a withdrawal of \$3 500-00 made by the appellant on 13 April 2013. This withdrawal did not appear on the scanned statement handed over to Chipo. On the original statement an amount of \$ 15 000-00 was

withdrawn by the appellant on 16 April 2013, but this figure was altered on the scanned statement to reflect a withdrawal of \$ 14 500-00. On the original statement balance carried forward was \$ 1 902-93 yet on the scanned document it was reflected as \$ 183-63 meaning that the scanned statement was generated by the appellant to conceal the thefts.

Further, the following withdrawals made by appellant were not appearing in the company books –

- 03/1/13 - \$ 2 200-00
- 12/3/13 - \$ 500-00
- 20/3/13 - \$ 5 900-00
- 25/3/13 - \$ 500-00
- 26/3/13 - \$ 200-00
- 13/4/13 - \$ 3 500-00

From the evidence of Chipu Mandangu and as shown on exhibits 8, 9 and 10 the following amounts were withdrawn by the appellant but were not received by the complainant –

- (i) 3/1/13 - \$2 300-00
- (ii) 6/2/13 - \$100-00
- (iii) 12/2/13 - \$3 600-00 was withdrawn and only \$ 360-00 was received.
- (iv) 28/2/13 - \$600-00
- (v) 1/3/13 - \$2 000-00
- (vi) 4/3/13 - \$600-00
- (vii) 5/3/ 13 - \$2 000-00
- (viii) 12/3/13 - \$500-00
- (ix) 2/3/13 - withdrew \$ 5 900-00 and only \$ 5 000-00 received
- (x) 25/3/13 - \$900-00
- (xi) 25/3/13 - \$ 200-00
- (xii) 13/4/13 - \$3000-00 and
- (xiii) 16/4/13 - \$ withdrew \$ 15 000-00 and only \$ 14 500-00 was received.

From the above analysis we were convinced that the appellant was the one who stole the money. The concession by the state was thus misplaced. If the appellant was not stealing the money there was no basis for him to scan bank statements and keep the original statement

with him? He was taking advantage of the fact that Chipu Mandangu was not making him sign when he was handing some of the money. In any case in his statement he clearly admitted that he was stealing the money and sharing with Chipu Mandangu. He now wants to shift the blame onto Chipu Madangu. At p 62 of the record this is what the appellant said-

“Q In your statement you indicated your conniving with Chipu Mandangu and giving you the withdrawal and share the money equally and in respect of other amount?

A When police came they intimidated me and threatened me that they were going to kill me so I was afraid so I just admitted was committing the offence with Chipu.

Q Are you saying the correct version is not what you told police but what you are saying before the court?

A Yes, and I was surprised to be hauled alone in the absence of Chipu.

Q Why would they hate you to such an extent?

A Chipu came after me and work (sic) and she had motive.”

I find the above explanation very unreasonable. Appellant was a mere messenger and Chipu was an Administration Officer. There was no motive whatsoever for her to see his downfall.

For the above reasons the trial court did not misdirect itself in any way when it dismissed the appellant’s defence and convicted him. The appellant’s guilty was proved beyond a reasonable doubt. The conviction is therefore confirmed.

As regards the sentence, this was theft from an employer. It involved breach of trust. Such offences are viewed seriously with these courts. A substantial amount of money was stolen over a period of time and nothing was recovered. In the circumstances the sentence imposed by the lower court cannot be disturbed.

In the result, it is ordered that the appeal be and is hereby dismissed.

CHATUKUTA J agrees_____

Murisi & Associates, appellant’s legal practitioners
National Prosecuting Authority, respondent’s legal practitioners.