

GIFT MAPANI
versus
THE STATE

HIGH COURT OF ZIMBABWE
HUNGWE & MUSHORE JJ
HARARE, 28 March 2018 & 23 May 2018

Criminal Appeal

MUSHORE J: This is an appeal matter in which we reserved judgment in order to consider whether the concession which was made by the State held merit.

Having read the record of evidence again together with my notes and the parties' Heads of Argument, it is my belief that this is a straight contractual dispute

The State's case was poor given the fact that it was a single witness case. Why I say so is that complainant's son should have been called to testify because he is the one who negotiated the contract with the appellant. As such, complainant's evidence as to what was agreed regarding the transaction is hearsay. (see p 25).

Page 26 record.

"Cross examination of complainant

Q. Did you go to accused with your car initially?

A. No I didn't

Q. When did you take your car?

A. On 9/07/09, 8.30

Q. When did you first met with accused?

A. That's my first time, it was my son who negotiated for the price."

Accordingly the conviction *a quo* is unsafe.

The concession made by the State in terms of s 35 of the High Court Act [*Chapter 7:09*] was properly made.

In the result:

The conviction of the court *a quo* is quashed and substituted with a finding of "not guilty". The sentence *a quo* is set aside.

HUNGWE J: