

FREDERICK MUSUNHE v THE STATE

SUPREME COURT OF ZIMBABWE,  
DUMBUTSHENA, CJ, BECK, JA & McNALLY, JA,

HARARE, FEBRUARY 25 & MARCH 8, 1985.

P. Machaya, for the appellant

M. Werrett, for the respondent

BECK, JA: The appellant was employed as the clerk of a Community Court. He was convicted of stealing \$12 which had been paid to him in his official capacity. He was sentenced to a fine of \$150, or 150 days imprisonment with labour in default of payment, and to four months imprisonment with labour suspended for three years on appropriate conditions. He has appealed against conviction only.

The magistrate was fully alive to the serious implications of the case for the appellant, despite the paltriness of the amount. He dealt with all the evidence and the probabilities in a most careful and thorough judgment and he emphasised that he did not accept the prosecution evidence lightly. He has not misdirected himself in any way and I am satisfied that the conclusion to which he was driven cannot be faulted.

The complainant Court against certain On the date of trial and the presiding of referred/

referred the case to the **Community** Court of which the appellant is the clerk. The evidence of the complainant and of Madenyika was that the appellant told, the complainant in Madenyika' s presence that she had to furnish the appellant with \$12 for service of the summons on the two persons that she wished to sue. The complainant said she did not have the money on her and was told by the appellant to bring it.

The complainant testified that the next day, which was 12 June, she withdrew \$12 from the Post Office Savings Bank and an entry in her passbook confirmed that. She immediately went to the appellant's office and gave him the \$12 she had withdrawn. It is common cause that she was indeed at the appellant's office on 12 June and that on that occasion she was given a note signed by him advising her to report on 6 July for her case to be tried. That note was put in evidence as Ex. 2.

The appellant denied that he saw the complainant and Madenyika together on 11 June and that he ever asked the complainant for \$12. He said that Madenyika and the complainant were both liars. He revealed that the total fee for serving a Community Court summons on each of two defendants was \$11.90, but said he never told the complainant that. He said there was never any intention to set the complainant's case down for hearing because she was "mad", and that he only gave her Ex. 2 on 12 June in order to get rid of her because she was being a nuisance.

As was to be expected, the complainant duly returned to the Community Court on 6 July for the trial of her case. On discovering that it was not coming on she made a\* fuss and later reported the matter to the police after she had not obtained

any satisfaction.

The magistrate found the complainant far from "mad". He says in his judgment and the record bears this out that "She gave her evidence well and consistently and did not contradict herself". It was his view that "Madenyika and the complainant seemed very clearly truthful". On the other hand he found the appellant "a most unimpressive witness" and observed that "his answers under cross-examination highlighted the compelling nature of the State evidence". The record also bears out this observation.

Nor could the appellant offer any sensible explanation as the magistrate rightly commented as to why the complainant or Madenyika should lie against him. The appellant conceded that the complainant had no reason to dislike him; on the contrary, he had been of help to her in the past and she only had reason to be grateful towards him before these events took place. As for Madenyika, the appellant made the extreme suggestion that Madenyika was probably after his (the appellant's) job as clerk of the court and thus lied in order to get the appellant out of that post. The magistrate, who saw Madenyika, thought it "all so unlikely". I can find no reason for disturbing any of the magistrate's findings of credibility.

The complainant's direct evidence contains no contradictions and was corroborated in a most material aspect by Madenyika who was a disinterested witness; moreover it was significantly fortified by the evidence furnished by the entry of 12 June in her P.O.S.B. passbook, and by the note, Ex. 2, given to her on that same day by the appellant. Her behaviour was consistent throughout with the course of events that she described. By contrast, the appellant's behaviour was/

was improbable and his evidence was unconvincing and, at times, far-fetched. It also failed to obtain corroboration from a source that should have been able to corroborate it, according to the appellant. He claimed that a Mrs Luthuli was present at the interview that he had with the complainant on 12 June, but when Mrs Luthuli was called she revealed that she was on leave at that time and had not been present.

Accordingly we have not been persuaded that the magistrate erred and the appeal is dismissed.

DUMBUTSHENA, CJ: I agree.

McNALLY, JA: I agree.