

THE STATE  
**versus**  
FRANCIS MAMBO RWENHAMO

HIGH COURT OF ZIMBABWE  
MUNGWIRA J  
HARARE, 15-19 October, 29 October, 2 November 2001,  
6-8 February 2002, 2 May 2002 and 29 July 2004

Ms *F Maxwell*, for the State  
Mr *M Mutombeni*, for the Accused

Assessors Mr M Nyandoro  
Mrs E Shava

### **Criminal Trial**

MUNGWIRA J: The accused, a Chief Economist and Deputy Registrar of Banks and Financial Institutions in the Ministry of Finance is charged with contravening:

1. Section 3(1)(a)(i) of the Prevention of Corruption Act [*Chapter 9:16*]
2. Section 4 (1)(d) as read with Section 4(1)(i) of the Official Secrets Act [*Chapter 11:09*]

Alternatively:

Section 4(a) of the Prevention of Corruption Act [*Chapter 9:16*]

3. Section 4 (1)(d) as read with Section 4(1)(i) of the Official Secrets Act [*Chapter 11:09*]

Alternatively :

Section 4(a) of the Prevention of Corruption Act [*Chapter 9:16*].

The allegations in respect of the first count are that the accused, being an agent of the Ministry of Finance, between the months of November 1997 and March 2000 corruptly solicited or obtained or agreed to accept or attempted to obtain from one Great Makaya gifts or consideration, more particularly,:

- a. cash in the sum of \$1 125 000
- b. 2 ten tonne trucks valued at \$10 000 000
- c. A tractor valued at \$3 000 000
- d. A Nissan Twin Cab motor vehicle valued at \$600 000.

The particulars pertaining to the second count are that the accused is alleged to have, in July 1988, unlawfully communicated an official document, namely a Ministry of Finance Joint Memorandum, issued in respect of an application by Prime Bank, to Great Makaya, a person to whom he was not authorised to communicate the said document.

In the alternative, it is alleged that the accused being a public officer and in the course of his employment as such in showing or communicating the above described official document to Great Makaya acted contrary to or in a manner inconsistent with his duty as a public officer for the purpose of showing favour to Great Makaya.

In the third and final count, the allegations are that the accused, on 8 February 2000 and at Holiday Inn, Harare, communicated to Great Makaya a person to whom he was not authorised to communicate such official document, a letter from the office of the Attorney General concerning Metropolitan Bank and in the alternative that, the accused being a public officer and whilst in the course of his employment by communicating said document to Great Makaya acted in a manner contrary to or inconsistent with his duty as a public officer for the purpose of showing favour to Great Makaya.

The accused having denied all the charges, the State was put to the proof thereof.

Before I proceed to deal with the detailed evidence it is necessary that I outline in brief the background to the case which facts are common cause.

Sometime in 1993 Great Makaya a director and promoter of Prime Bank Limited made enquiries with the relevant authorities as to the requisite procedures to enable him to process a commercial banking licence resulting in his filing the necessary application forms. The initial application had been stillborn. In 1995 Mr Makaya had revived his efforts to obtain a commercial banking licence and it is in the course of processing this second application that he encountered the accused person. A complaint filed by Mr Makaya against the accused arising out of his interaction with the accused in this exercise forms the subject matter of the present proceedings.

The star witness for the state was the complainant, Great Makaya.

He, in his testimony, spoke of the circumstances surrounding his application for a commercial banking licence in 1993. He indicated that after he had submitted his application to the relevant authority, he in 1994 registered a company, Prime Bank Limited whilst he was awaiting the outcome of his application.

Sometime in August of the same year he had received a letter from the Registrar of Banks, in which he was advised that his application had been approved. Exhibit 3.

The witness stated that he was unable to pursue the matter and the project had been shelved as he was at the time participating in an electoral campaign which resulted in his election as a Member of Parliament.

In June and after the general elections he had again approached the Registrar of Banks, Mrs Mpofu, and had advised her that he was in a position to launch his bank.

He had been surprised at the hostile reception that he received from Mrs Mpofu who had informed him that the approved licence had been cancelled owing to his delay in implementing the project. He was to use his own words thus obliged "to start from scratch".

Mrs Mpofu had referred him to her deputy who was the accused person. The accused had instructed the complainant to file a fresh application, which the witness did in or about September of the same year.

Thereafter a period of two years elapsed without any progress. In about November 1997 the witness had made a telephonic enquiry into the cause of the delay.

The outcome of this call was a suggestion from the accused that the two meet at the Holiday Inn hotel, Harare. The witness had agreed to the proposal and the two had met over lunch.

At the meeting the witness had expressed his concerns at the delay in the processing of his papers and the hostile attitude of Mrs Mpofu. The response of the accused was that Mrs Mpofu was given to tribalism and favouritism. At the witness' urging, the accused had explained that there was a practice in his ministry whereby bank licence applicants, before a licence could be granted, were required to pay 1% of the capitalisation cost of the project.

He was advised that in his case that would amount to a figure of \$500 000 which he could if he wished pay over to the accused who would then share the money with other individuals in the system.

The witness had immediately detected an element of corruption but had responded positively to the overture by stating his willingness to part with the sum mentioned once his project became operational.

The accused had rejected that proposal and had further informed the witness that many others had made payments upfront.

The accused was however eventually persuaded to accept payment after the project had been approved. The two parted company with a promise that the project would be approved by February 1998.

In response to a subsequent enquiry as to the progress of the application the accused had again demanded payment upfront. The accused had, in addition to the demand, told the witness that the shareholding of his company should be changed from individual to institutional investors. He, despite his growing frustration complied and had secured the necessary shareholders.

Once that had been done he received further promises, which did not materialise, that the licence would be in place by March.

When the anticipated approval did not materialise in March the accused demanded that the parties enter into a new arrangement, the terms of which were that the witness was to hand over to the accused the sum of \$500 000 and a twin cab motor vehicle. Delivery of the motor vehicle was to be effected before the grant of the licence.

The witness stated that immediately after this demand had been made he had approached the then Reserve Bank Governor, Dr Tumba to make a report on the issue. According to the witness, Dr Tumba was visibly perturbed at the news and had referred the witness to the Ministry of Finance and alternatively to the police as he did not consider the matter to be within his jurisdiction. The witness went on to describe his previous fruitless attempts to obtain redress from the Ministry of Finance and mentioned that he had failed to secure audience with the Permanent Secretary of that Ministry.

He had for that reason considered futile the advice of Dr Tumba and had instead sought advice from a legal practitioner who was a board member of Prime Bank Limited.

The idea of making a report to the police had been mooted in the early stages but had been rejected for lack of tangible or concrete evidence of the conduct of the accused. Finally it had been resolved that the best course was to lay a trap for the accused.

Having settled upon this course of action the witness visited the accused and offered to procure for him a vehicle in return for his facilitation of the approval of the project.

He had in the company of the accused gone 'window shopping' for a vehicle. The outcome of this exercise was that the accused identified to the witness the type of vehicle which he wanted.

Once the type of vehicle had been identified the accused had undertaken to see to the project's approval by April 1998.

The United Merchant Bank debacle had followed soon thereafter and had affected adversely the processing of the application. The witness had, he stated, been advised by the accused that one of the shareholders of the project had been heavily exposed to United Merchant Bank and was thus unable to purchase shares in Prime Bank.

The witness had put forward the name of an alternative shareholder but that shareholder had withdrawn as it considered the amount of information required of it to amount to harassment and an investigation into the affairs of that company.

The accused had eventually agreed that upon delivery of a twin cab vehicle he would assist the witness in securing a suitable institutional investor.

The witness had thereafter consulted a friend, Milan Vidovic, who had agreed to donate to him a twin cab motor vehicle for the purpose of entrapping the accused with the plan being that once the trap was set the company, Prime Bank Limited, would purchase the vehicle from Vidovic.

The accused had been afforded the opportunity to test drive the vehicle and had expressed his satisfaction with it. It had then been agreed that the vehicle be surrendered into the custody of the accused pending the finalisation of the bank registration exercise, which the accused promised was to be completed within a fortnight of the date of delivery of the motor vehicle.

The accused had despite being in possession of the vehicle failed to honour his end of the bargain. At that stage however the papers for the vehicle had not been handed over to the accused.

After further negotiations the accused had procured a letter, Exhibit 4, from Zimnat which organisation was to take up the outstanding 25% share in the bank.

In July 1998, the accused had contacted the witness to inform him that he was almost through with the necessary paperwork and had asked the witness to meet him in order that he could be shown documentary proof of that fact.

The two men had met at Kentucky Hotel, Hatfield which hotel was close to the residence of the accused. The accused had in his possession the entire Prime Bank file. He showed to the witness the memorandum by the joint committee of the Reserve Bank and Ministry of Finance in which it was recommended that the application be approved.

The accused had assured the witness that there would be no further hitches and that the witness was, in light of that information, to make preparation for the transfer of ownership of the vehicle.

A day or so later and at the behest of the accused the witness had visited the accused at his home. The accused had again produced the Prime Bank file and the joint memorandum which had since been endorsed by all the relevant senior officials save for the Permanent Secretary of Finance who had raised, what the witness considered to be false and mischievous allegations. Exhibits 5 and 6. According to the witness, the accused was not authorised to show him the documents.

The accused had informed him that the reason for the queries was that the witness had refused to pay the bribe sought. The witness had surmounted this new obstacle by producing documentation to counter the allegations made by the Permanent Secretary.

The reaction of the accused was to demand transfer of the vehicle and an additional payment of \$500 000.

After some persuasion the accused had agreed to complete the task of registration by September 1998. The accused had however accompanied this promise with a threat to reverse the process in the event that the witness failed to honour his end of the bargain.

The witness then made arrangements for the motor vehicle to be transferred into the name of the accused and informed the accused that a payment of \$125 000 for customs duty was required before change of ownership could be effected.

The seller of the vehicle, Vidovic then entered into an agreement of sale of the vehicle with Prime Bank Limited with the purchase price being set at US \$ 15 000. It was explained that the agreement between Vidovic and Prime Bank was entered into to provide a form of security lest any harm befell the motor vehicle.

After telling the accused that he was unable to raise the amount of duty, the accused had suggested that he borrow the amount which would have to be reimbursed to him at a later stage. The accused in pursuit of that arrangement obtained a cheque in the sum of \$125 000, Exhibit 8, which cheque the witness handed to Vidovic. The duty was duly paid and a customs receipt was issued Exhibit 9.

After this transaction the witness claims to have been, between October 1998 and July 1999, busy attending to other issues and stated that he only re-

established contact with the accused in September 1999 after he had put together the amounts required for the capitalisation of his project. At that stage the accused had increased his demands and was asking for \$ 1 000 000 in cash together with two trucks and a tractor for his farm. He further requested that once the bank was operational that the witness was to donate to him his Mercedes Benz vehicle. He did not however pursue the issue of the Mercedes Benz when the witness objected.

The accused had informed the witness that problems had again arisen with the shareholding structure of the bank in that Zimnat was as a company undergoing a restructuring exercise. The accused had indicated that this hurdle could, for the purpose of obtaining approval of a bank licence be overcome by retaining Zimnat on the books as a shareholder. The idea was that once the licence had been granted other shareholders could then be brought on board to replace Zimnat. The accused did however insist that payment of the amount of \$1 000 000 was a prerequisite to approval. It was according to the witness the accused who had done the groundwork to bring Zimnat on board as a shareholder.

The witness had succeeded in convincing the accused as to the availability of that amount after confirming that certain funds which had been deposited with Bard Discount House was to earn interest in excess of \$3 000 000.

The accused had further sought to complicate matters by demanding that all shareholders had to submit proof of payment for their shares in the company. The witness had advised the accused that it had been agreed that his company, Prime Bank Financial Holdings, was to assume responsibility for the lump sum payment of the costs of capitalisation in order to speed up the registration process, it being intended that the other shareholders would meet their obligations over a period of 24 months.

The accused had insisted on compliance and this had been achieved with some difficulty. One of the shareholders, Fidelity, had however decided that it was no longer interested in investing in Prime Bank.

Despite these efforts and because the accused was in a hurry to obtain payment the licence was approved on 16 August 1999.

The next stage after registration was that of the pre-opening inspection by the Reserve Bank.

The accused having threatened that there would be no inspection without payment, agreement had been reached to the effect that the amount

of \$125 000 paid by the accused as duty for the vehicle would be reimbursed prior to inspection, with the sum of \$ 1 000 000 to be paid after the inspection. The farming equipment was to be delivered within six months of the date of inspection.

Having concluded this agreement the witness had done all that was necessary for the inspection, such as the restructuring of the shareholding, and had advised the Reserve Bank when all was in order.

A preliminary meeting had been held with Reserve Bank officials but on the appointed date for the inspection there was a no show by the Bank officials. Upon enquiring as to the reason for their failure to attend to the inspection the witness had been informed that the Reserve Bank had received instructions to suspend indefinitely the inspection. The witness had called him to advise him to settle his debt in order to put things right.

A meeting was held between Mrs Mpofu, the witness and other shareholders.

Mrs Mpofu had at the meeting behaved badly and the matter had been left unresolved. As the witness left Mrs Mpofu's office he had been followed by the accused who had told him that Mrs Mpofu required payment upfront. The accused had threatened that if payment was not made the police would be brought in on the pretext that the Bank was involved in money laundering and the witness would be further implicated in the Noczim scandal in which the witness' brother James Makaya was under investigation.

Riled by the threats, the witness testified to having approached senior Reserve Bank officials to complain of his predicament only to be informed that the Reserve Bank had no control over the Ministry of Finance.

After handing over a copy of the shareholders' agreement, Exhibit 14, to the accused who had in turn handed it over to Mrs Mpofu, the police had started harassing the various shareholders.

Upon seeing that the threats made by the accused were being realised the witness requested the accused to meet him in connection with the bribe at the Holiday Inn Hotel, Harare. It was then his intention to enlist the police in a sting operation.

At the meeting the witness had requested that he be given the opportunity to pay the sum of \$125 000 in order to avoid the issue of a letter of cancellation of his bank licence. The two had failed to reach agreement and the next that happened was that a barrage of attacks began to appear in the press.



It is then that the witness filed a complaint with Superintendent Kangara of the Criminal Investigations Department, Fraud squad. With the concurrence of Kangara a plan to entrap the accused was devised.

The plan was for the witness to lure the accused to the Holiday Inn Hotel on the pretext of reimbursing the amount of \$ 125 000 and for an arrest to be made once the money had been handed over.

The first attempt had come to nought as the accused was alert and on guard.

After further consultation with Superintendent Kangara it was decided that marked bank notes were to be used.

In the interim the witness' communications with Mrs Mpofu and the accused only resulted in the stepping up of pressure for payment.

Because he had failed to pay the money, he in September 1999 received a letter dated 9 September, Exhibit 15, from the Registrar of Banks. In the letter he was informed of the Registrar's intention to cancel the Prime Bank licence.

At the suggestion of the accused the witness had sought the intervention of a Mr Gibson Mandishona who met Mrs Mpofu on behalf of the witness. This meeting was in vain. In the meantime adverse reports continued to be published by the media.

In early 2000 the accused had told him that the Central Intelligence Organisation was tapping the telephone calls of senior officials. The witness again invited the accused to meet him at the Holiday Inn Hotel as he had something which he wished to give to the accused.

Having arranged the meeting with the accused he informed Superintendent Kangara of the intended meeting in addition to the fact that the accused had requested from him money with which to meet school fees and electricity and water bills.

On a later date and in order to lull the accused into a false sense of security he had paid over to the accused an amount of over \$20 000.

In furtherance of the plan the witness set up a recording system in his office whereby he made a recording of telephone conversations held between himself and the accused prior to the meeting at the Holiday Inn where the accused was arrested.

As neither the witness nor the police were able to raise a significant amount of money, the sum of \$5 000 was placed in an envelope after the notes had been photocopied.

He had met the accused at Holiday Inn Hotel where the accused was arrested by police officers who were lying in wait for him. The marked notes had been recovered from the accused.

A tape which bore a recording of telephone conversations between the witness and the accused in which the meeting at the Holiday Inn was agreed was produced as an exhibit. This was after the defence had raised an objection to the production of the tape and an enquiry had been held into the circumstances of the recording to determine its admissibility.

The witness stated that he set up the recording equipment on his own and did not want to involve the police or the telephone company in the recording as he did not want word of the trap to leak. He denied that the tape was edited at any stage after it had been recorded. He had, he explained, retained the tape at the instance of Superintendent Kangara to whom he had played the tape. He stated that after recording the tape he had duplicated the tape. The police had collected the tape from him sometime in May 2000.

It emerged from the witness' testimony that the tape produced was the duplicate, Exhibit 17, and that the witness was still in possession of what he described to be the original, Exhibit 18. The defence was agreeable to the production of the original at a later stage in the proceedings.

As it turned out the content of the duplicate and original, and this is common cause, was identical.

The witness was adamant that he had not tampered with the tape.

He outlined to the court the technical aspects of the recording equipment.

The police officer, Johnson Muzinda, testified to his having in May 2000 received from the witness, Great Makaya the tape which he filed with the docket. He stated that he later surrendered the tape and docket to a certain Assistant Inspector Mandovha who took over from him the investigation. D/A/I Mandovha also testified to that effect.

The objections raised by the defence were that the tape was inaudible; that the contents emanated from one or two or more conversations; that the witness had tried to surrender the tape to the police timeously; that the tape was recorded without the supervision of the law enforcement authorities; that the number of copies made of the tape were unknown thus making it difficult to identify the original; that there was no evidence to show that the accused had authority from the telephone company to interfere with the telephone

lines and that the accused was a suspect witness involved in the bribery of Ministry officials.

There was after taking into account that the witness is the holder of a Doctorate in Physics and Engineering who professes to be an expert in the telecommunications field and after witnessing a demonstration as the method of recording no doubt whatsoever as to the proficiency of the witness or that the system devised and used was capable of recording telephone conversations between the witness and another person in the manner described by the witness. As for the assertion by the defence that the method used to obtain the recording was illegal and constituted a violation of telecommunications laws, evidence adduced from Obert Batsirayi Musemwa, a telecommunications engineer in the employ of Tel-One, formerly PTC, the responsible authority, was to the effect that in the peculiar circumstances of this case the witness was not required to seek authorisation to act in the manner he did and that his conduct could not be classified as tampering or interfering with telecommunications equipment. In short the uncontroverted evidence on this aspect is that the witness, Makaya did not act illegally.

The argument advanced, that the tape recording was unintelligible and inaudible, does not warrant much consideration as the tape when played was clearly audible and the voices thereon distinct.

The suggestion that it was tampered with was half-hearted. At the end of the day I found the defence challenge to be facile and lacking in weight. Judging from the manner in which state witnesses were cross-examined I was left with a strong impression that the defence itself lacked conviction as to the grounds of challenge to the tape. The most striking observation that I was able to make is that nowhere does the accused himself deny unequivocally his participation in the conversation captured on tape.

Relying on the judgment in *S v Ramgobin and Others* 1986 (4) SA 117, in which the requirements for admissibility of audio and video tape recordings are set out the court determined that the tape recording was admissible. Transcripts of the recording were furnished to the court, Exhibits 19, 20, 21 and 22.

When subjected to cross-examination the accused confessed to a grave mistrust of the police whom he stated were renowned for their corruption. He described the Ministry of finance as a 'Sodom and Gomorrah' and alleged complicity between Mrs Mpofu, and the accused. He expressed his belief that

he was victimised by the officers in the particular department as he was no longer a Member of Parliament who wielded some influence.

He was taken to task on his failure to involve the police from the early stages and his attitude was that at that time he was in possession of insufficient evidence of a crime having been committed as there had been no direct demand with what was happening then best described as a 'squeeze', that is conduct designed to frustrate him in his enterprise in order to induce him to pay for the grant of favours. The 'squeeze' had translated into reality in about November 1997. Issue was taken with the fact that the accused only thought to report to the police and to set a trap for the accused at a time after he had delivered the twin cab motor vehicle to the accused. The response of the complainant was that he handed over to the accused the motor vehicle after his meeting with Dr Tumba and that by then the trapping process had commenced. He had approached Superintendent Kangara in November 1999 after he had done the groundwork. He denied that he had made the report to the police in order to deflect police attention from himself and his activities as he was at the time under police investigation. In his opinion the police had in about October 1999 been unleashed upon him by Mrs Mpofu because he had refused to pay a bribe. The intention had been to link the witness to allegations against his brother who was employed by Noczim.

The second state witness was Mrs Mpofu, the Registrar of Banks and Financial Institutions. She confirmed that the accused was her deputy to whom she would delegate certain duties. She stated that the accused was not endowed with any final decision making powers.

Her evidence addressed the rules and procedures which governed the making and processing of commercial bank licence applications and the role of her office in this process. She further made mention of the various committees involved in the decision making process once all requisite documentation was in place. These committees were, according to the witness, constituted of personnel from both the Ministry of Finance and the Reserve Bank of Zimbabwe. Once the working committee which she chaired had debated and approved an application the final word lay with the Senior Review Committee of which the Governor of the Reserve Bank and the Senior Secretary for Finance were members. The deliberations of the working committee would be recorded by the accused or whoever would have recorded the minutes of the meeting.

The recommendations of that committee would then be reduced to what was referred to as a joint memorandum, Exhibit 5 in this case, which would be signed by the witness and The Director for security and surveillance of the Reserve Bank. This is the document which would then be referred for consideration and endorsement by the Governor of the Reserve Bank and the Senior Secretary for Finance.

The witness in recounting the background and details of the application made by the applicant recalled that the complainant first filed an application for a bank licence in 1994 .Conditional approval had been granted in respect of that application with two of the conditions having been that the promoter, Makaya, was to furnish proof of sufficient funds and evidence of credible management.

There was, she remarked, no time limits stipulated for the processing of applications.

Makaya had despite numerous reminders failed to meet these conditions and had in fact dropped out of sight.

He had resurfaced about a year later and had failed to tender a reasonable explanation for his failure to act upon the approval.. In response to his wanting to revive his project he had been advised that the approval had lapsed and that he would have to start from scratch. It was then that Mrs Mpofo had referred Makaya to the accused to whom she had delegated the task of processing the new application.

The State through this witness produced Exhibit 31, the list of requirements that Makaya was to fulfil in order for him to succeed in the registration process. The required vetting process had been conducted by the accused in conjunction with an official of the Reserve Bank.

The accused, she said, dealt with the complainant's application in its initial stages, his duty being to assess whether or not the applicant met the set criteria for registration.

She described the manner in which the application of the accused had been dealt with through to the committee stage.

After her committee had passed the application, certain queries had been raised by the then Senior Secretary for Finance, Mr Kuwaza and he had requested that certain adverse information concerning the accused be investigated before he could confirm the grant of the application. The query related to certain information regarding cheques issued by Makaya which were said to have been dishonoured.

The accused had been instructed to confirm the accuracy or otherwise of that information and the onus was on Makaya to prove the information wrong and if true to furnish an explanation about the circumstances surrounding the issue of these cheques.

When told that Makaya had testified to having been shown by the accused the document signed by the Senior Secretary, her reaction was that that would not have been very proper as the document was a file copy intended for internal use by the Ministry.

She stated that both Makaya and his bankers had refuted the allegations.

There being no further hindrances the application had been approved, a certificate of registration, Exhibit 11, had been granted and Makaya had been notified.

After the grant of the certificate a newspaper report in connection with Prime Bank had come to the attention of the witness. In the report it was said that Makaya had in informing a reporter of the grant of the certificate further made mention of the identity of some of the shareholders in the bank, amongst whom was an external investor, that is a New York Bank, Trust Manhattan. Some of the others mentioned were Zimnat and Fidelity. The statement about the New York bank was, she said untrue.

The publication of this report prompted communications from Zimre, a subsidiary of Fidelity and Zimnat with both companies pleading ignorance of their involvement in Makaya's project. The offshoot of these revelations was that the witness, as she was obliged to do, wrote to the Director of Surveillance and Security in the Reserve Bank, which institution was to conduct a pre-opening inspection of Makaya's bank, to advise of the stance adopted by these companies which had been registered as major shareholders. The result was that the pre opening inspection was aborted and measures were taken to revoke the registration.

Makaya was duly advised in writing of his right of appeal against the decision to revoke his licence Exhibit 15.

Makaya's response to the letter was that he was he was stepping down from his position as promoter of the bank and that the persons to be appointed in his place were a Mr Mandishona and a Mr Malumo of Nicoz. He further advised that alternative shareholders had been identified to replace Fidelity and Zimnat. In her opinion Makaya adopted this course of action as some sort of damage control measure as he had been caught on the wrong footing.

The grounds of appeal filed were in the view of the witness unsatisfactory and in keeping with her duties she made an adverse recommendation to the Minister of Finance who was the final arbiter. The Minister had dismissed the appeal.

The Minister having determined the appeal thus, a letter was addressed to Messrs Malumo and Mandishona, Exhibit 28, requesting surrender the certificate of registration for cancellation. There had been non compliance with the terms of that letter.

Shortly thereafter Makaya had started to make the allegations that his application had failed because he had refused to agree to overtures by Ministry officials for a bribe.

The allegations had been wide in nature and were generally linked to the bribe solicited from him mention was made of the names of a number of officials in the Ministry some of whom were mentioned by the witness. The witness did not, however, state what it is, was said by Makaya about each individual mentioned in his affidavit.

The witness had only become aware of the arrest of the accused a day later when a report appeared in the Daily News. She had herself been served with an affidavit attested to by Makaya, Exhibit 16, and in which he was making the bribery allegations.

The witness was questioned about a certain document concerning the Metropolitan bank. Her comment was that her department had sought advice from the office of the Attorney General as it was suspected that Metropolitan bank had in its application for a banking licence misrepresented to the regulatory authority the identity of its shareholders. The relevant correspondence was kept in the applicant's file in the registry. She stated that she did not know why the accused had shown papers from that file to Makaya as these documents were for internal consumption and did not have any bearing on his application.

When subjected to cross-examination the witness denied that she was hostile towards the applicant and indicated that her sole concern was to ensure that Makaya met the requisite criteria and complied with the conditions for grant of a banking licence.

She stated that by the time Makaya had sought to reinstate his application a policy decision had, pending legislative amendments to the relevant statutory instruments been taken to raise the minimum rate of capital required from previous levels. The decision had been in line with international

banking practices and shifting trends in the economy. The move, she said, was not targeted at frustrating the efforts of any particular individual to obtain a licence. It was standard practice to at, at intervals revisit the requirements for the registration of banks. In this particular instance certain changes had taken place from 1994/5 when Makaya had first received approval. The general gist of this aspect of Mrs Mpofu's evidence was that there had to be in place stringent conditions for the registration and operation of banks in order to protect the interests of the public.

As in the examination in chief whilst under cross-examination she again described the intricacies of the vetting procedures undertaken by her department and the responsibilities of proposed shareholders.

The next witness was Milan Vidovic, a national of Eastern Europe. His evidence was that he and Makaya had been friends for a few years. He stated that he had been mandated to sell the twin cab vehicle by the owner who was a friend but had not advertised the sale publicly as duty had not as yet been paid for the vehicle. He had asked Makaya if he was aware of anyone who might have been interested in acquiring that type of vehicle.

Makaya had himself expressed interest and had taken the vehicle on a test drive. He had later brought the accused to view the vehicle and to assess its condition.

The asking price for the vehicle was US\$ 15 000 which at the time translated to a little over \$600 000 of the national currency. The price was not subject to negotiation.

About two weeks after he had viewed the car Makaya had requested that he be given the vehicle for test driving purposes. He had asked the witness to follow him to a place to which he was to deliver the vehicle as he needed assistance with driving because he was driving another vehicle.

Together he and Makaya had driven to the home of the accused where they had left the twin cab vehicle. After the expiry of the agreed two week trial period the witness had approached Makaya. The result was that the trial period was extended. This was in or about May 1998. It had taken about 5 months for the amount due for duty to be produced.

Between May 1998 and October of the same year he had retained custody of the motor vehicle registration papers.

He had next seen the vehicle some months later when he had attended to the change of ownership. The change of ownership was effected after the accused had given the witness a cheque in the sum of \$125 000, Exhibit 8, for



the payment of customs duty. The actual amount of duty had been \$121 452.01 as is reflected on the customs clearance certificate, Exhibit 30. He had not refunded the balance some of which had gone to defray incidental expenses related to the transaction. He had, after paying the requisite amount of duty, requested Makaya to authorise the registration of the vehicle in the name of the accused. With Makaya's consent the vehicle was then registered into the name of the company of the accused, Searchlight Investments.

Several days after change of ownership had been effected and on 12 October, a written agreement of sale of the motor vehicle, Exhibit 7, had been concluded between the witness and Makaya on behalf of Prime Bank.

After the arrest of the accused the witness had made representations to the police and the vehicle had been returned to him. As he had not received the purchase price for the vehicle and Makaya was not willing to pay he had then sold the vehicle to another party.

When questioned by counsel for the defence, the witness stated that he had no knowledge of any arrangement between the complainant and the accused and further that he did not consider it his business to establish the relationship between the two. He had at no stage sought to discover the use to which Makaya intended to put the vehicle. After he had queried the change of ownership to the accused and had been satisfied with Makaya's assurances that that arrangement was in order.

He was adamant that the accused could never have purchased the vehicle for the sum of \$125 000 as that amount represented a mere tenth of the actual market value of the vehicle.

He stated that he had obtained a quotation from Zincars and who had sold the car to the owner as new. Zincars, had placed the market value at in the region of \$1 160 000.

The transaction between himself, Makaya and the accused was he stated based on trust as Makaya had been known to him for a period of 2 to 3 years. He further believed that as a former Member of Parliament Makaya was not likely to fall into default.

The fourth witness was Dr Tumba the then Governor of the Reserve Bank.

He knew the accused as what he termed a junior office in the Ministry of Finance. He also knew the complainant, Makaya, as a prominent businessperson, former Member of Parliament and a person who would from time to time visit his office to discuss various matters.

His testimony was that the complainant could have in the course of one of his visits to the office of the witness have spoken of the difficulties he was experiencing with his application and may have mentioned to him that attempts were being or had been made by officials of the Ministry of Finance to solicit a bribe to facilitate the processing of his bank application. He however had no specific or definite recollection of such a report. He merely surmised that if a report of that nature had come to his attention he would have referred the complainant to the responsible Minister or the police as the Reserve Bank was not a licencing authority. He stated that the complaint was more in the form of a general issue rather than an accusation levelled at any individuals. He was of the view that he would have remembered had he been told by Makaya that he had given the accused a twin cab motor vehicle.

When asked if he was aware that the complainant was having problems obtaining a banking licence, he said that the process generally took some time as there were various stages at which applications were reviewed.

He was unaware of the query raised by the Permanent Secretary for Finance in his capacity as a member of the senior reviewing committee.

In his opinion the progress of the application was normal although he accepted that there was a possibility that Makaya may have at some stage advised him that the application was taking long to process. All that he was able to say regarding the application was that it was eventually approved.

The former Permanent Secretary in the Ministry of Finance was next to testify. He was, he said, acquainted with the accused who was employed in his Ministry as an officer. He however had very limited personal contact with the accused. Makaya he knew as a Member of Parliament and also from stories about the latter's involvement in a matter relating to some cheques which had been dishonoured. These stories had been in circulation in 1992.

The witness confirmed that he was the author of the notes, Exhibit 6, wherein a query was raised about the matter of the dishonoured cheques. He was, he explained duty bound to seek clarification about any issue as some of the important principles underlying the banking business are absolute integrity and honesty. His sole purpose in raising the query had been to determine if Makaya had been cleared of any wrongdoing in that matter. A report had subsequently been filed in which Makaya was vindicated of any untoward conduct resulting in the approval of the project.

He was asked about the propriety of the accused's conduct in showing Makaya the document, Exhibit 6. His response was that conduct of that nature was likely to cause the Ministry to be exposed to criticism.

He was asked by counsel for the defence how, if the complainant wanted to know the reason for non approval, Makaya could have been told the reason without reference to the document in question.

The witness explained that the normal procedure would have been for the complainant to have been told that his application was still being considered. He further went on to say that the system made efforts to depersonalise issues.

The question was repeated several times culminating in what seemed to be a concession from the witness to the effect that he was unable to say that there was anything particularly wrong.

In the opinion of the witness all the file contents were confidential as opposed to secret.

He was asked for the rationale of the provisions of the Official Secrets Act. The answer elicited was that he assumed that this was to safeguard Government interests.

Asked what government interests would have been prejudiced by Makaya having sight of the document, Exhibit 6, the witness was of the view that it would not have been fair to Makaya to show him the contents as the remark cast aspersions on his character.

The witness stated that at no stage had Makaya approached him with a complaint against any of the officials in his department. He went on to say that there would have been no hindrances to Makaya seeing him had he wished to do so as he during the period of his tenure operated on an open door policy.

He gave an example of an incident in which he had met the promoter of Metropolitan bank in the Ministry corridors. This gentleman had hinted at corrupt practices by certain officials in the office of the Registrar of banks. The gentleman had when invited to do so, failed to furnish the witness with the details or evidence of these corrupt practices. He had further been unwilling to participate in or assist an entrapment exercise for the reason that he did not want to prolong the processing of his application. The witness remarked that in the absence of any information of substance he was unable to follow through on the complaint. He was of the attitude that had Makaya made known to him at the time the allegations which form the subject matter of this case appropriate action would have been taken.

The witness was asked if he had after the arrest of the accused had sight of the file pertaining to the banking licence application by Makaya. He said he had done so but had not detected any sign of or proof of improper conduct in the manner in which the matter had been handled. The most he could say was that there seemed, after approval had been granted to have been a rash of queries raised by Ministry officials which queries appeared to be inconsistent with the approval.

He confessed that Makaya's affidavit in which the allegations of corruption appear made very disturbing reading.

He seemed to accept that it was fairly common knowledge that all was not well in his Ministry and that a culture of corruption had arisen. He specifically made mention of an incident in which his deputy, a Mr Machalaga had spoken to him in general terms about the level of corruption in the Ministry.

The 6<sup>th</sup> witness was Ambrose Mandovha, the investigating officer. He testified to having taken over the case from the original investigating officer to whom it had been assigned.

His evidence was that he took the typed transcript and tape, Exhibit 17 which he found in the docket to the office of the court recorders where corrections were effected to the transcript. Thereafter the transcript was interpreted from the vernacular into English by a court interpreter after which both the tape and transcript were handed to the prosecution. He himself did not listen to the tape.

This witness was not subjected to cross examination. The seventh witness was Constantine Musango, a senior transcriber. He confirmed the evidence of Mandovha that it is he who attended to the checking and correction of the typed transcript. This he did on the basis of the content of the tape presented to him by the police. It is he who certified as correct the transcript, Exhibit 19.

He said from his experience he was able to decipher in listening to the tape, two distinct voices. He commented that although in certain portions of the tape there were noises of what could have been vehicular traffic the tape was audible and could not be described as unintelligible. The tape, he said, consisted of a conversation recorded in more than one part. He stated that in the course of his daily work he listened to voices on tape and was able to make a distinction between the various speakers and gave the example of tapes recorded in the course of court proceedings.

The eighth witness was Timothy Ndhlovu a court interpreter in the employ of the Ministry of Justice. His evidence was to the effect that it is he who was responsible for the interpretation of Exhibits 19 and 20. His evidence was not contentious.

The ninth witness was Assistant Commissioner Chamunorwa Ernest Kangara. He was the senior man in the Criminal Investigation Department, Fraud Squad.

His evidence was that he was, sometime in November 1999 approached by Makaya who made to him a report about the corrupt handling of his Banking licence application by the accused. He was, when he visited Makaya's office given the full details of this alleged misconduct.

A decision had been made to set a trap for the accused who was said to have demanded an upfront payment of \$125 000. Makaya had informed the witness that he was not in a position to raise such an amount. It was then suggested that Makaya was to raise the amount required and that when he had done so he would revert to the witness.

The witness did not hear anything from Makaya for a period of almost three to four months. During that period the witness was involved in the investigation of several other major cases.

On 3 March 2000 Makaya had reported to the witness that he was under pressure from the accused to make payment.

The witness then assembled a team of police officers. These officers were sent to Makaya's offices where Makaya filled them in on the events which had occurred. It was arranged that the trap be set for the 7<sup>th</sup> day of the same month. The trap was successful and the accused was indeed arrested.

Makaya had before the arrest of the accused informed the witness that he was in possession of certain tape recordings of his conversations with the accused. It was agreed that the tape was to be retained in the custody of Makaya for the purpose of recording further conversations. He had left it to the investigating officer to collate all the necessary documentation and evidence.

The twin cab motor vehicle had been recovered from the accused after his arrest.

The witness was in cross examination asked if he was surprised that Makaya had made payments to the accused and without the knowledge of the police prior to the date of arrest.

He was of the view that Makaya could have experienced difficulties in contacting him as he was highly mobile and tied up with other matters. He was

not certain if Makaya had informed him at their first meeting that he had given the accused a motor vehicle. He had, he said, not seen need to investigate Makaya as he considered him to be a complainant who had been extremely courageous in his decision to report the matter.

The witness agreed that it was he who on 7 October 1999 wrote the letter, Exhibit 23A, in connection with the investigations into the brother of the accused who was an employee of NOCZIM the national oil procurement company. He confirmed that the police were at about that time seeking evidence from all quarters and thought it worthwhile to investigate any possible links between the brother of the accused and the bank of the complainant lest the bank was being user for money laundering. He was unaware if Makaya was at the time alive to the investigations into Prime Bank and said that Makaya had been invited by the police for an interview in connection with the matter.

Assistant Commissioner Kangara confirmed that the twin cab motor vehicle which had been confiscated by the police was surrendered to the vehicle owner.

Fani Claudius Ngwenya described how he in the company of two other CID officers visited the offices of the complainant in March 2000. After the complainant had briefed the officers, arrangements were made with regard to the trap which was to be set for the accused. Part of the arrangements consisted in the photocopying of bank notes which were to be used to effect the trap.

Towards lunch hour on the 7<sup>th</sup> March, he in the company of these two other officers proceeded to Holiday Inn, Harare where they positioned themselves in anticipation of the arrival of the accused. After the accused had been handed the money and as he was about to leave the hotel grounds he had been accosted by the officers who had after informing him of the allegations against him conducted a search which resulted in the recovery of an envelope containing the money bills which had been copied earlier on. Exhibits 31A, B, and C. The accused had, when confronted by the police and upon recovery of the envelope stated that the envelope contained documents from his workplace.

After the arrest the officers had in the company of the accused proceeded to the residence of the accused. There was nothing recovered at the house. The twin cab motor vehicle had been recovered on a later date.

Evidence was adduced from the other two officers. Johnson Muzenda's evidence was much the same as that of Ngwenya.

He in his evidence however highlighted that the accused had after a verbal warning and caution had a statement reduced to writing in the notebook of one of the officers. The accused had in that statement explained that the money in his possession had not been given to him as a bribe but rather that it was a loan. He denied that when searched the accused had in his possession not one but two envelopes.

He had no knowledge of when Makaya first sought police assistance in bringing the accused to book. He had become involved for the first time on the 7<sup>th</sup> March 2000. The most that he had gathered was that the application by Makaya for a banking licence was commenced in 1995.

He was unable to comment on the value of the motor vehicle recovered from the accused.

The witness Muzenda stated that it is he who received the tape from Makaya and that he listened to the tape, Exhibit 17, and prepared a transcript of the contents which were mostly in the vernacular.

Muzenda stated that he was involved in the investigations and compiled relevant documentation.

According to the witness the complainant elected to prepare his own statement.

The evidence of the third police officer, Mpofu, who was present when the accused was arrested was much the same as that of Mandovha and Muzenda. Evidence was given as to the circumstances in which a formal written statement was recorded from the accused, Exhibit 32.

Oliver Mtasa, the financial director of Zimnat Life testified to the effect that the accused was a stranger to him.

He recalled that he had been approached by the police in connection with a letter, Exhibit 12. The police wanted to establish from him the authenticity of the letter.

He said that was the first time that he laid eyes on the letter.

The signatory of the letter was unknown to the witness and his name did not appear on Zimnat's establishment.

He was further questioned about Exhibit 4. Again he indicated that the document was new to him. He however confirmed that the name of the signatory was that of a former Zimnat employee. The witness had joined

Zimnat in July 1999 at which time this person was no longer working for the company.

The witness denied that Zimnat had paid the \$12 500 000 which was reflected in Exhibit 12 as its contribution to the capitalisation of the Prime Bank project. The company had, after these documents had come to light, conducted internal investigations which had failed to yield any connection between Zimbank and the complainant's project.

In short what this witness said was that Zimnat had never had any dealings with or involvement in the Prime Bank project.

The evidence of this witness was straightforward and not subject to dispute.

The testimony of the Director of Surveillance and Security of the Reserve Bank, Stephen Gwasira was that from 1997 he worked in liaison with the accused in matters relating to the supervision and licencing of banking institutions. He described as cordial his working relationship with the accused.

He described his role in the processing of the Prime Bank application and the manner in which this application had been dealt with by the Reserve Bank.

His evidence addressed the arrangements that had to be made and requirements for new banks and pre opening inspections as it was vital for the Reserve Bank to ensure that adequate risk management policies and procedures were in place to protect depositors funds and to ensure stability in the banking and financial sectors.

After Prime Bank had written to inform the Reserve Bank that the bank was ready for the pre opening inspection to be carried out it had been agreed that the inspection would be carried out on 7 October 1999.

Shortly before the inspection was to be conducted the office of the Registrar of Banks had informed the Reserve Bank that certain irregularities in the shareholding structure, with specific reference to Zimnat and Fidelity, of Prime Bank had come to light. Attention was drawn to the fact that in terms of banking legislation it was an offence to make a misrepresentation of the nature described, Exhibit 36. This information had resulted in the cancellation of the pre opening inspection. Prime Bank had been advised of this development in writing, Exhibit 35.

After Exhibit 35 had been dispatched Makaya had requested a meeting with officials from the Reserve Bank for the purpose of discussing the Prime Bank issue.



At this meeting, which was held in the presence of the witness and another official Makaya had told the officials that what he had to say was confidential in nature. He had then told the officials that the accused had solicited an \$80 000 bribe and that he believed that his failure to pay that amount had resulted in the allegations of misrepresentation.

The witness had advised the complainant to raise the matter with the Minister of Finance. He had further told the complainant that it was necessary for him to address the issue of the misrepresentation and that only when that matter had been cleared would the pre-inspection exercise take place.

The witness having advised Makaya thus had made a report of the matter to the Governor of the Reserve Bank who had concurred with the course adopted by the witness.

Evidence was adduced from the accused.

He confirmed that Mrs Mpofu was his immediate superior.

The accused outlined in fair detail the relevant regulations and procedures adopted which govern the processing of applications for banking licences and drew the attention of the court to Exhibit 37, the guidelines and criteria for licencing of banking institutions in Zimbabwe. Makaya's was he said, not the only application from an indigenous person which went through his hands. He stated that amongst the various applications he dealt with were those from discount houses, building societies and merchant banks.

He had come to know Makaya in or about 1993-1994 when Makaya submitted his first application for a banking licence. This first application had been approved in August 1994.

After Makaya had been advised that his project had been approved he had gone quiet until about November 1997.

When Makaya resurfaced in 1997 he had been advised that his previous application had lapsed and that he was to submit a fresh application. After having been thus advised Makaya did nothing until March 1998 when he submitted new project documents.

The witness referred to five letters of intent from prospective shareholders in Prime Bank, Exhibits 38A-E. These were required by the licencing authority for the purpose of determining that there was adequate capitalisation of the project.

Prime Bank had been requested to look for a new shareholder after it emerged that one of the proposed shareholders had been affected by the

United Merchant Bank fiasco. The promoter, Makaya, had duly complied, Exhibit 24.

Nine members of the committee had again met to deliberate upon the application and to vet and approve the new shareholders.

That the project was then approved by the initial committee was evidenced by the minutes of the Financial Review Committee dated 10 July 1998, Exhibit 40.

This approval paved the way for a joint memorandum which was to be forwarded to the Senior Review Committee, Exhibit 5. This is the committee constituted of the Governor of the Reserve Bank and the Permanent Secretary of Finance.

The joint memorandum had been signed by the Governor on 28 July 1998. On 3 August of the same year the memorandum was referred to the Permanent Secretary for Finance.

Approval had been granted after the queries raised by the Permanent Secretary had been addressed.

After approval Makaya was required to file letters of commitment from the shareholders listed in the joint memorandum and these investors who were obliged to make deposit individually the amounts pledged.

Makaya had responded to the letter of approval some 262 days or 10 months after approval had been granted. Notification was given to the Registrar that Prime Bank had on behalf of all the shareholders made a lump sum deposit into Bard Discount House of the amounts due, Exhibit 43. As the deposit was in contravention of the guidelines Makaya was advised that proof of individual deposits was required.

Makaya had subsequently produced documents to show that the individual shareholders had honoured their commitments. A memorandum had been issued to advise the Permanent Secretary that the payments had been made and that he could in the circumstances proceed to issue the certificate of registration. This was done on 16 August 1999.

Commenting upon Makaya's evidence that it was the accused who had told him to replace what he termed 'political' shareholders the accused stated that the decision was made on the recommendation of the committee.

Once the certificate of registration had been issued the next step which was the pre opening inspection was the preserve of the Reserve Bank.

It was, as the court had heard in the state case, an article published in the Independent newspaper of 3 September 1999 in which Makaya had

divulged the identity of a foreign investor in Prime Bank, the name of which investor had not been included in the application which caused the pre inspection report to abort. There had been further cause for concern when Fidelity and Zimnat had contacted the licencing authority professing ignorance of their shareholding in Prime Bank. The complaint by Fidelity and Zimnat had arisen from the content of the same newspaper story.

The office of the Registrar of Banks was he said obliged to investigate the issue as the conduct of the complainant in holding out these institutions as investors appeared to be tantamount to a gross misrepresentation as it is Makaya who had furnished the Registrar with the letters of commitment.

On 7 October 1999 Kangara who was then a Chief Superintendent with the Criminal Investigation Department, Fraud Squad, wrote to the Reserve Bank seeking information about the structure, management and capitalisation of Prime Bank. The information was provided to the police in a letter dated 14 October 1999. In that letter the police were notified that Zimnat and Fidelity were disputing any involvement in Prime Bank contrary to details provided by the promoter of the Bank.

Sometime in January 2000 Kangara had held a meeting with Reserve Bank officials at which the accused was in attendance. Kangara had at that meeting not divulged the exact nature of his investigations.

The Registrar of Banks was in terms of banking laws obliged to give notice of the revocation of the licence but the final decision as to what was to happen as a result of these revelations was the province of the responsible Minister.

After Makaya had received notice of revocation he had resigned from his position as the promoter of Prime Bank and was replaced by Messrs Malumo and Mandishona who then noted an appeal against the decision to revoke the licence.

The grounds of appeal were unsatisfactory and the appeal was dismissed by the Minister. Notice of the cancellation of the licence was then published in the Government Gazette of 24 March 2000.

The accused was adamant that he was not guilty of any wrongdoing. He stated that after his first meeting with Makaya, a friendship had developed and the two would meet outside the workplace to discuss matters of mutual interest. Makaya would at times seek his advice on other unrelated matters as Makaya knew the accused to be a man well versed in financial matters. He insisted that he personally negotiated the sale of and purchase of the twin cab

motor vehicle from Vidovic without the assistance or input of Makaya. His version is that the most that Makaya had done was to introduce him to the seller. He claimed to have no knowledge of the agreement of sale entered into between Vidovic and Prime Bank and queried how that could have been possible as Prime Bank was at the time an unregistered and thus non-existent entity. He further indicated that he was not aware of any amounts paid in respect of customs duty.

As the market value of the vehicle was in 1997 documented as being \$210 000 he believed the amount mentioned by Vidovic to have been exaggerated. He would only accept that the vehicle may have been worth that much the year after he made the purchase.

He queried the reason for his having sought as part of the bribe to be paid to him a tractor as he had on his farm seven tractors some of which were excess to requirement. He had, he stated no need of a lorry as he had the use of a number of trailers with the tractors being used for traction power.

He had at no stage told the complainant that he owned a farm and had no knowledge of how the complainant came by that information.

The accused pointed out that the evidence of the complainant to the effect that he was satisfied that the complainant would be able to pay him after Makaya had alluded to the three million dollar interest which was to be accrued from the deposit with Bard Discount house. The reason he gave for this assertion is that plaintiff was not in a position to dispose of the interest as he wished as the money belonged to the shareholders.

He was of the view that had the complainant been serious about the issue of the bribe he would not have approached officials from the Reserve Bank but would have made a report to the Permanent Secretary of the relevant Ministry and or the police. He, as had the state witness, Kuwaza before him, testified to the effect that Kuwaza was accessible and not out of the reach of the complainant. He considered surprising Makaya's failure to take action for a period of almost 4½ years. The accused further expressed some reservations about whether the Governor of the Reserve Bank had been told the truth by the complainant.

Referring to the Metropolitan Bank document which he is alleged to have shown to the complainant, the accused stated that the document related to issues which arose long after the Prime Bank licence was cancelled.

After the Permanent Secretary had raised the query of the dishonoured cheques Makaya had been invited to attend at the office of the Registrar where

he was told what the Secretary had said. The complainant had been reluctant to respond in writing. Because of this Mrs Mpfu had instructed the accused to attach copies of the letter and memorandum.

Several days before his arrest Makaya had called him to arrange for the two to meet as Makaya had wanted to discuss general issues with him concerning money as he knew the accused to be an expert on the stock market and also because accused sat on the stock exchange board and dealt with other aspects of the global finance market. He, as appointed, met the complainant at the Holiday Inn Hotel. At that time he felt that there was nothing wrong with his meeting the complainant as Makaya had by then relinquished his chairmanship of Prime Bank and the bank licence had been cancelled. Upon meeting Makaya he had told him that the meeting would be brief as he intended to see someone at the City Council offices who was to advance to him a loan of \$2000. Makaya's reaction had been to offer to make a loan to him. A few days had gone by without contact. On 6 March 2000 he had received a telephone call from Makaya. The accused had confirmed that he was still interested in the money.

He had, as testified to by the state witnesses, met Makaya at Holiday inn Hotel on the day of his arrest. He did not count the money, which was in an envelope when it was handed to him.

He disputed Makaya's evidence that he had previously been given varying amounts of money.

He attributed the allegations against him to Makaya's frustration at his failure to secure a banking licence. He considered the account given by Makaya as to the amounts paid to him to be inconsistent. Makaya was in his opinion his own worst enemy and had suffered the negative results he had because of his failure to be honest and because he lacked capital. The accused went on further to suggest that Makaya had caused his arrest to deflect attention from himself as the net had started to close in on him.

The evidence of the majority of the state witnesses was not contentious and was not subjected to any material challenge. By this I refer to the testimony of the persons who handled the tape, the police officers, the court transcriber, the interpreter, officials from the Reserve bank, the police officers who were involved in the investigation of the matter and those who arrested the accused.

The testimony of Mrs Mpofu, the Registrar of Banks made straightforward reading and she emerged unscathed from the aura of suspicion which had seemed to clothe her as the complainant testified.

I again can make no adverse finding in respect of the evidence of the former Permanent Secretary of Finance in so far as his evidence relates to the present case. What did however emerge and which is a factor which I found disturbing, is that it appears from his evidence that the existence of corrupt practices within the department responsible for the registration of banks and financial institutions was an open secret in the Ministry and that despite the whispering there was no concerted action by the senior authorities to curb these practices or to institute investigations.

The former Governor of the Reserve Bank was in my view deliberately vague and was extremely cautious lest he be drawn into opening what might have been a veritable can of worms.

It is, in my view, not likely that he would have forgotten or retained only a vague memory of a report received about the corruption of a fairly senior official who was responsible for the process of vetting bank licences.

There appeared to be an effort to divorce the Reserve Bank completely from the activities of the office of the Registrar of Banks in the Ministry of Finance whereas the evidence points to the interaction and consultation between the two bodies. There is evidence before the court at the lowest level that the accused in the course of vetting and preparing documentation before the committee stage of an application worked in liaison with an official from the Reserve Bank. It is also common cause that the final step in the processing of an application involved the submission of recommendations to the Governor of the Reserve Bank and the Permanent Secretary. For a project to be approved it was mandatory that these two senior men appended their signatures to a memorandum. The overall impression formed is that the general attitude was an adoption of a *laissez faire* attitude and to turn a blind eye to the goings on in the Ministry of Finance.

I now turn to the evidence of Makaya.

He made a great deal of effort to portray himself as an upright citizen and a victim who had succeeded in turning the tables on his persecutor. He was given to verbosity and his story was at times disjointed and thus difficult to follow.

As the trial progressed it became clear that he could not have been an innocent victim and that there was merit to the submission of the defence that he should be treated as a suspect witness.

The picture that unfolded was that the complainant did not have sufficient capital or financial backing for his project at the time he filed his application. There is evidence in both the state and defence cases which more than suggests improper conduct on the part of the complainant. The most glaring example is that of the alleged misrepresentation by the complainant as the promoter of Prime Bank that certain institutions had committed themselves as investors in the bank whereas it was subsequently discovered that this was untrue. Although Makaya held out that it was the accused who secured Zimnat as an investor it is not likely, if this is true, that he, Makaya, was kept in the dark about the details of the purported investment. Makaya would have had to have some input and communication with the Zimnat contact.

The totality of the evidence lends itself to only one conclusion which is that Makaya was a man of little or no means and was thus not in a position to satisfy the requirements for the grant of a banking licence. There was a hollow ring to his explanation that he did not pursue the project when it was first approved as he was tied up attending to his duties as a politician.

As chronicled in the state and defence case, the events which resulted in delays and setbacks appear to have been centred on problems related to the capitalisation of the project. The question which immediately posed itself to the court in weighing up Makaya's evidence was as to how Makaya would succeed in his project without manipulation of the system. The answer which presented itself left a sour taste in the mouth as it lent weight to the submission by the defence that Makaya did not have clean hands.

This finding is borne out by the fact that it took Makaya a period of more than four years to bring the matter to the attention of the law enforcement authorities. His failure to inform the senior officials in Ministry of Finance has not been satisfactorily explained.

It is also important to note that Makaya approached the police almost a year and a half after he says he arranged for the accused to assume possession of the twin cab motor vehicle. Makaya's explanation was that he needed to gather concrete evidence before he made a report. The motor vehicle was in my view substantial physical evidence and would have been more effective than the moneys which are said to have exchanged hands and

of which there is no physical proof. Makaya is not an unintelligent person and could be expected to have appreciated that.

The whole set up engenders a feeling in the court that had the application been successful and had Makaya had got his way it is not likely that the report would have seen the light of the day.

It would further not be far fetched to consider as real the probability that Makaya may have been spurred into make the report against the accused as he had been "spooked" by the police investigations into his project.

All that does not however in the view of this court serve to exonerate the accused person.

The vehicle is to this court the most damning piece of evidence against the accused.

Even if Makaya's holier than thou attitude has failed to withstand scrutiny a salient feature of this case is that the state did not seek to rely on the evidence of Makaya alone. This court has before it the testimony of the Vidovic, who has not been shown to have had any axe to grind with the accused.

Vidovic's evidence made Makaya a pivotal factor in the transaction relating to the sale of the motor vehicle.

There is no evidence to show that Vidovic was party to Makaya's entrapment scheme.

His evidence as to the estimated value of the motor vehicle was not rebutted. His evidence was further supported by the receipt from the customs department which reflects that duty was paid for the vehicle of a sum of a little over \$121 000.

The defence sought to make something out of the fact that the amount given to Vidovic was in excess of that. The fact however remains that the duty was paid in October 1998 shortly before ownership was transferred to the accused. The accused it is noted did not dispute the witness' evidence that he was given possession of the vehicle in or about March 1998 and omitted to tender an explanation as to how this came to be. The amount of duty paid if one is to believe the story of the accused is that the profit earned by the seller was a paltry and unrealistic figure of a little under \$4 000.

The agreement of sale of the vehicle which was entered into between Vidovic and Prime Bank would, given that Vidovic was a neutral party lend credence to his evidence.



I would here comment that Vidovic's neutrality is further borne out by the fact that he did not support Makaya on the aspect that he had agreed with Makaya to use the vehicle for the purpose of entrapping the accused when such an admission would have had no adverse consequences on him.

On the evidence of the accused it is clear that he and the complainant, who he revealed was unknown to him, until he started to process his application, had developed a cosy relationship. The very reason he gave for his meeting with the accused on the day he was arrested rang alarm bells.

The defence has taken issue with the evidence of the tape recordings. In as far as this court is concerned the tapes merely constitute the cream or icing on top of the cake and with or without them the court is satisfied that there is sufficient evidence to support a conviction.

The unavoidable conclusion is that the accused did not come into possession of the vehicle in the manner he described but that the source of the vehicle was Makaya. That being the case the onus shifted upon the accused to show that he did not come by the vehicle as a result of corrupt practices.

The accused in the opinion of this court failed dismally in this endeavour.

The fact that he was found in possession of money given to him by Makaya did little to improve his chances of escaping conviction and in fact aggravated his position in that his credibility was badly dented.

This court has no difficulty in determining that the motor vehicle constituted the subject matter of a bribe or act of corruption as alleged by the State.

It is not clear as to whether or not it is the accused who asked for the vehicle or whether it was offered to him by Makaya but the fact of the matter is that it has been established that there was a violation of the section of the Prevention of Corruption Act as charged in the first count. This court does not discard the possibility that there could have been further and increased demands made upon Makaya but the difficulty experienced is that Makaya's evidence in this regard was sketchy and not easy to grasp. He at times lost the Court in the sheer volume of his words.

The witnesses glossed over the allegations under the Official Secrets Act and no effort was made to establish the status of the documents for the purpose of assisting the court in determining whether these were documents which fell within the ambit of the Act. I am therefore not satisfied that the elements of those offence were adequately canvassed.

In the result the verdict of this court is as follows: accused is in respect of:

- |         |  |
|---------|--|
| Count 1 | Guilty (in respect of twin cab motor vehicle only) |
| Count 2 | Not guilty main and alternative charge             |
| Count 3 | Not guilty main and alternative charge             |

*Attorney-General's Office*, legal practitioners for the State  
*Mtombeni. Mukwasha & Associates*, legal practitioners for the accused.