

AMOS MUPURI
versus
THE STATE

HIGH COURT OF ZIMBABWE
HUNGWE & BERE JJ
HARARE, 23 October 2014

Criminal Appeal

Ms R Maposa, for the appellant
T Mapfuwa, for the respondent

HUNGWE J: The appellant was convicted of forgery as defined in s 137 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. He was sentenced to 36 months imprisonment of which 12 months were suspended on conditions of good behaviour and a further 12 months on condition of restitution.

He appeals against both conviction and sentence.

The appellant advanced five grounds of appeal in his notice of appeal. However, a reading of the grounds shows that they all point to a general dissatisfaction with the sufficiency of evidence for the crime charged. The first and fourth grounds bemoan the failure to adduce the handwriting expert evidence as being a fatal flaw in the conviction. The remaining grounds all speak to the dissatisfaction with the finding of fact which the trial court made in its reasons for judgment.

The brief facts upon which the conviction was based can be summarised as follows;

The complainant shipped his motor vehicle from the United Kingdom to Zimbabwe. When he followed it up, he was unable to complete its clearance and registration formalities before he returned to the United Kingdom. He granted his mother the power of attorney to complete those formalities. The facts show that the complainant authorised his mother to use his motor vehicle as collateral for a loan. She was led to the appellant and another person. These men then asked for her to move the motor vehicle to a separate car sales show-room where they kept similarly pledged motor vehicles. They also asked for the motor vehicles documents which she gave over to the appellant.

She borrowed \$300-00 over 30 days at 40 per cent interest. No documents were signed for the loan as the men gave one excuse or another for failure to reduce the agreement

to writing. She was given the money. When her son came back he was briefed about the transaction. He engaged the appellant with a view to get his car back. They demanded \$5 200-00 instead of \$4 200-00. They also claimed that his mother had sold the motor vehicle to the appellant. An affidavit allegedly sworn to by complainant was relied upon by the appellant to buttress his claim. He reported the matter to police. Appellant and the person who commissioned the appellant were charged with forgery.

In the appellant's heads of argument only two grounds are relied upon on appeal. The first ground is the failure to call the handwriting expert to prove that the appellant indeed forged the affidavit upon which the sale was based. The second ground relied upon was the failure to consider the evidence of the person who commissioned the affidavit which evidence was to the effect that the appellant did not appear before him to sign the affidavit. In a well-reasoned judgment the trial magistrate found that it was necessary for the State to prove that the appellant actually forged the appellant's signature in the agreement of sale. It was sufficient that available evidence pointed to the appellant only and no-one else as the author of the affidavit before the court could convict. It seems to me that in putting this matter in this way, the trial court cannot be faulted. The case for the State rested entirely on circumstantial evidence. That evidence shows that:-

- (a) The appellant gave the complainant's mother \$300-00;
- (b) The appellant then took control and possession of the motor vehicle belonging to the complainant;
- (c) When challenged to accept the repayment of the loan and to return the motor vehicle, the appellant produced an affidavit allegedly deposed to by the complainant;
- (d) That affidavit was deposed to and commissioned by a commissioner of oaths when the complainant was out of Zimbabwe;
- (e) Complainant's mother denied any knowledge of it or appearing before a commissioner of oaths.

Faced with these facts the court concluded that the appellant forged or procured the forging of the affidavit.

I am of the view that that inference is the only reasonable one in light of the circumstances of the case. The appellant stood to benefit from procuring it since his loan had, on his version, accrued interest whilst he enjoyed the use of the motor vehicle.

I am satisfied that the evidence by the commissioner of oath, appellant's erstwhile accomplice, does not in any way assist him. Appellant only needed to have procured the

forgery of the affidavit in order to be properly convicted. In light of the above, the appeal against conviction is therefore dismissed.

As for sentence I do not find any basis to interfere with the sentence as there is no misdirection regarding the principles upon which it was assessed.

BERE J agrees _____

Khanda & Company, appellant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners