AMANDA MURIDZO
versus
THE STATE

HIGH COURT OF ZIMBABWE
CHIKOWERO AND KWENDA JJ
HARARE, 19 July 2024

Criminal Appeal

O Kondongwe, for the appellant
K H Kunaka, for the respondent

CHIKOWERO J:

1. The appellant and two others were convicted following a trial on a charge of bribery as defined in S 170 (1) (a) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].
2. The charge reads:

"On the 2nd of October 2018 and at Karoi Magistrates Court , Karoi both David Mazowi and Shelter Kachirika or one or more of them unlawfully gave or agreed to give or offered a public official namely Amanda Muridzo who was a Magistrates at Karoi Magistrate court a gift or consideration as an inducement or reward for doing or omitting to do , any act in relation to his[sic] principal's affairs or business or for showing or having shown or not shown any favour to David Mazowi and Shelter Kachirika that is to say both David Mazowi and Shelter Kachirika gave or offered a bribe to Amanda Muridzo and David Mazowi transferred US $ 20 from his Eco cash Account number 0776 428 271 into Shelter Kachirika's Eco cash Account number 0773 702 708 who in turn transferred the US $ 20 into Amanda Muridzo's Eco cash Account number 0778 508 863. Amanda Muridzo accepted the reward knowing or realizing that such a gift or consideration was not due to her."

Each was sentenced to a term of imprisonment a portion of which was suspended on the usual conditions of good behaviour.

4. Dissatisfied with both conviction and sentence the three filed a joint notice of appeal.

5. David and Shelter, who were the first and second accused at the trial, filed a joint notice withdrawing their appeals.
6. The remaining appellant (for convenience simply referred to as the appellant) abandoned her appeal against the sentence on the date of hearing. By then she had finished serving her sentence.
7. After listening to submissions by both counsels, we dismissed the appeal. We gave extensive oral reasons for our decision.
8. We have now been requested to record our reasons for the judgment. These are they.
9. David was a litigant at Karoi Magistrates Court. Shelter was a clerk of court at that court station. The appellant was a magistrate at the same station.
10. The court a quo found that David had used Shelter as a conduit to bribe the appellant with US$ 20, to render decisions favorable to him in matters pitting him against his estranged wife.
11. The sole issue arising in this appeal is whether the court *a quo* was correct in making the factual finding that the amount of US $ 20 received by the appellant was a bribe.
12. The appellant failed to convince us that the impugned finding is wrong. In delivering the judgment of the court in *Zinwa* v *Mwoyounotsva* SC 465/13 ZIYAMBI JA said at p 16:

> "An appellate court will not interfere with factual findings made by a lower court unless those findings were grossly unreasonable in the sense that no reasonable tribunal applying its mind to the same facts would have arrived at the same conclusion or that the court had taken leave of its senses, or put otherwise, the decision is so outrageous in its defiance of logic that no sensible person who had applied his mind to the question to be decided could have arrived at it: or that the decision was clearly wrong" see also *Hama* v *National Railways of Zimbabwe* 1996(1) ZLR 64 (S) at 670.

13. In a thorough and searching judgment the court a quo gave sound reasons for convicting not only the appellant but her then two co- accused.
14. On 11 September 2018 the appellant dealt with a maintenance claim involving the first accused and his estranged spouse (the complainant). The complainant had applied for maintenance in the total sum of $ 250 for their two minor children. The appellant granted her maintenance in the total sum of $ 50 for the two minor children, with effect from 30 September 2018. Although dissatisfied with the court's decision, for which no reasons were recorded, the complainant neither appealed nor sought a review of that decision. Shelter was the clerk of court who handled that court record, in that she was the one who had set it down for hearing.

15. On 1 October 2018 the appellant granted a protection order in favour of David, against the same complainant. Shelter, although she was not the only clerk of court at that station, had again set down the matter for hearing. The application was filed by David on 24 September 2018.

16. The very next day, that is on 2 October 2018, David used his Eco cash Account to transfer US $ 20 into Shelter's Ecocash Account. Immediately thereafter, he transferred US $ 6 into Shelter's Ecocash account. Hot on the heels of these two transfers, Shelter then transferred the US $ 20 received from David into the appellant's Ecocash account. She retained the US $ 6 in her account. This chain of movement of money from David through Shelter to the appellant happened within eleven minutes.

17. In dealing with the application for a protection order on 1 October 2018 the appellant remarked that David could increase the maintenance payable to the two minor children of the marriage.

18. After the court had adjourned the complainant engaged Shelter who advised her that those remarks were not part of the court's order and that the complainant would have to apply for an order for upward variation of the maintenance.

19. The complainant filed an upward variation of the maintenance. She sought that the maintenance be varied by US$ 50. The court, being the appellant, varied the maintenance by US $ 20. This was on 23 October 2018 . Again Shelter had set down the matter for hearing. The complainant, despite being dissatisfied by the decision, neither appealed nor sought a review of the same.

20. Anzikaria Mudiwa filed an application for the eviction of David. She claimed to have purchased the right, title and interest in that property from the latter. That was the property where the complainant was residing with the two minor children of the marriage. David had moved out of that matrimonial home. The application was served at the matrimonial home. Having become aware of the matter, the complainant filed, on 3 October 2018, an application to be joined to the eviction application . The application was set down by Shelter for hearing before the appellant on 8 October 2018.

21. Come 8 October 2018 the matter was called but was removed from the roll with the appellant recording that the complainant was in default. This was so despite the fact that the complainant was present in court and was raising her hand when her name

was called . The appellant ignored her, denied her audience and proceeded to remove her application for joinder from the roll by falsely recording that she was in default . Again, the complainant had an unfavorable decision rendered against her by the appellant. The matter also involved David as a litigant with Shetter having also set it down before the appellant.

22. Stung by this chain of unfavourable decisions by the appellant in matters involving David, the complainant received an anonymous call that she would never succeed in her court battles with David because money was changing hands between David, Shelter and the appellant.

23. The caller refused to reveal his/ her identity but requested the appellant to meet a certain motorist to receive some document. As it turned out it was a typed complaint addressed to the Chief Magistrate. The author remained anonymous. The complainant wrote her own letter of complaint to the Chief Magistrate, outlining her dissatisfaction with how her matters, all involving David, had been handled by the appellant. But she did not allege that the appellant had been bribed. She had no evidence to that effect.

24. T Chibanda, then Provincial Magistrate in charge of Mashonaland West Province, was assigned by the Chief Magistrate to investigate whether the appellant had handled civil matters involving the complainant at the material time. Chibanda was the state's first witness. He testified that he discovered that the appellant had presided over the matters discussed in this judgment. Since the two letters of complaint received by Chibanda via the Chief Magistrate related to court cases involving the complainant and in which Shelter and the appellant had played a role, Chibanda interviewed the latter two. Shelter said she was in love with David. The appellant said she received money from Shelter as payment for diapers and undergarments she had sold and delivered to Shelter on credit. Shelter told Chibanda the same thing. They gave Chibanda a record of their Ecocash transactions from Econet which did not reflect the transaction which became the subject of the charge.

25. Chibanda escalated the matter to the police. He furnished them with the Ecocash record availed to him by Shelter and the appellant.

26. Econet was served with a warrant of search and seizure. Only then did it avail to Chibanda the Ecocash record reflecting the movement, on 2 October 2018, of the

US $20 from David's Ecocash account through Shelter's Ecocash account to the appellant's Ecocash Account. The same record also reflected that on the same date David had also transferred US$ 6 into Shelter's Ecocash account.

27. The court *a quo* rejected David and Shelter's defences that the US $ 20 represented the former's part payment of a debt he owed to the latter. Neither could state the quantum of the said debt and how much remained outstanding. Both denied, in court, that they were in love yet that is what they had told not only Chibanda but Paul Misheni. The latter was the investigating officer. He was the second state witness. Misheni told the court, without being challenged, that records he obtained from Econet reflected no intimate messages between David and Shelter. Instead, those records reflected numerous phone calls between the two.

28. The court *a quo* also rejected Shelter's defence that the US $ 20, which she transferred to the appellant immediately on receipt thereof from David, was payment of a debt that she owed to the appellant.

29. The court *a quo* found as a fact that David bribed the appellant, using Shelter as a conduit, to influence the appellant to rule in his favour or as reward for having ruled in his favour in his court cases involving the complainant. Both David and Shelter withdrew their appeals against both conviction and sentence. That development means that the duo are no longer challenging the factual findings that David used Shelter as a conduit to bribe the appellant. That position is incidentally fatal to this appeal.

30. The court a quo found that both Chibanda and the complainant were credible witnesses . The two never testified that the appellant committed the offence. They were content to leave the trier of fact to decide that issue. Chibanda was content to restrict himself to what his investigations uncovered. The complainant merely gave evidence on what happened, minus the bribery, for which she had no evidence. But this we say. Her testimony that she saw and heard Shelter and the appellant discussing the outcome of her application for upward variation of maintenance in the court corridor, in full view of the complainant, was accepted by the trial court and not challenged on appeal. The court *a quo* found that the appellant was thus so close to Shelter that it was false that the appellant did not know that the US $ 20 she received from Shelter had been paid by a litigant in matters which were being presided over by the appellant. That litigant was David. As a litigant, David had no business paying a judicial officer presiding

over his cases, except if the payment were a bribe. The court *a quo* found that it was such. We agree.

31. In all her cases, presided over by the appellant, the complainant never got what she prayed for. She did not succeed. The court a quo was correct in finding that those unfavourable outcomes were not informed by the exercise of discretion but by filthy lucre. It will be recalled that Chibanda testified, without being challenged, that in all those cases no reasons were recorded for the decisions rendered. The situation became so bad that in the application by the complainant to be joined as a party to the eviction proceedings the appellant completely ignored her presence in court and proceeded to remove the matter from the roll on the false premise that she was in default.

32. The prosecution proved, *a quo*, that the appellant, then a judicial officer stationed at Karoi Magistrates Court, received US$ 20 through Ecocash as a gift from a litigant involved in cases the appellant was presiding over. In terms of S 170(2) of the Criminal Law Code, the presumption arose that the gift was a bribe. We agree with the court a *quo* that the appellant failed to rebut that presumption.

33. These are the reasons why were dismissed the appeal at the hearing.

CHIKOWERO J……..

KWENDA J……..

Gurira & Associates appellant's, legal practitioners
The National Prosecuting Authority, respondent's legal practitioners