

STELLA THOLANA

VERSUS

THE STATE

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA AND MOYO JJ
BULAWAYO 27 JANUARY 2014 AND 19 JUNE 2014

C Dube for the appellant
G. Ndlovu for the respondent

Criminal Appeal

MOYO J: The appellant was convicted on a charge of fraud by the magistrates court sitting at Victoria Falls on 30th January 2012, and she was sentenced to a fine of \$100 or in default of payment 10 weeks imprisonment. She paid the fine but dissatisfied with her conviction, she now appeals to this court.

The grounds of appeal were that the court *a quo* misdirected itself in concluding that the appellant obtained the licence through fraudulent means yet a Mr Chikumba a VID Inspector who was based in Bulawayo when the appellant got her driver's licence, confirmed in his testimony that indeed there were some bogus vehicle Inspectors who defrauded innocent people.

That the court *a quo* misdirected itself in giving excessive weight to the process of obtaining a driver's licence as explained by Mr Chikumba, the appellant not being privy or knowledgeable to this process.

That in her own assessment the magistrate found the appellant to be an honest person who would not engage in fraudulent activities.

The appellant's defence was that she got the licence after going to the vehicle inspection depot.

On cross-examination of the VID Inspector by the appellant the following exchanges

were made;

Q: How come my provisional expiry in March was taken?

A: They could have taken it so that you believe it. If then had the number it would have been there (emphasis ours)

Q: Could you not trace it from the driving school I used?

A: we can go and find your name but that doesn't mean you were tested at VID or the guys were genuine (emphasis ours)

Q: Isn't it possible that the person that gave me did not do it properly?

A: It is possible but the person is not from VID. The person moved around and talk to VID officers they having around but they did not give (emphasis ours)

Under Re-examination the Prosecutor asked the VID official the following questions:-

Q: Is it possible that the accused could have got a fake certificate whilst genuinely believing it was original.

A: I have a question on that, the person who realises it is fake is the holder. She should have known the document was not genuine but she did not go through the genuine processes (emphasis ours)

Q: Are you stating that there were people conducting fake licence scams to genuine people seeking licences?

A: The people scout for expiry candidates and take them to VID, talk to VID officers. (emphasis is ours)

The exchanges between the VID official and the appellant under cross-examination can not be said to prove that the appellant committed a fraud beyond any reasonable doubt for the following reasons.

- 1) The appellant's defence is that she went to the VID and was given the certificate of competency in issue here. The certificate of competency is definitely a fake one as confirmed by the VID official but has the state proved beyond reasonable doubt that the

appellant obtained same fraudulently? The exchanges made with the VID official alluded to herein show that potential licence seekers can be duped at VID by some people masquerading as VID officials and who would then issue fake driver's licences. The VID official states that the holder of the licence (in this case the appellant) is the one who should realise that the licence they have been given is fake. How can a person who has not been a holder of a driver's licence distinguish a genuine one from a fake? The VID official also stated that there were indeed people who would conduct fake licence scams to people genuinely seeking licences.

In our view the evidence of the VID official in light of the fact that it is possible that the appellant was duped, vitiates the element of an intent to defraud on the appellant's part. That she indeed went to VID and was subsequently issued with this licence that has been found to be fake, can not be dismissed in light of the VID officials' concessions on the bogus people at VID.

The appeal should accordingly succeed as we are unable to find that the state proved the guilt of the appellant beyond any reasonable doubt.

The conviction and sentence are accordingly set aside.

Kamocha J.....I agree

Mcijo, Dube and partners, appellant's legal practitioners
Criminal Division, Attorney General's Office, respondent's legal practitioners