WASHINGTON JEKANYIKA
versus
THE STATE

HIGH COURT OF ZIMBABWE
HUNGWE & BERE JJ
HARARE, 15 May 2014

Criminal appeal

H. B. R. Tanaya, for the appellant
J. Uladi, for the State

HUNGWE J: The appellant was convicted of an offence termed undermining of police powers as defined in s 277 of the Criminal Law (Codification and Reform) Act [*Cap 9:23*]. He was sentenced to 15 months imprisonment of which 6 months were suspended on condition of good behaviour.

He appeals against both conviction and sentence.

The State filed a notice, in terms of s 35 of the High Court Act, [*Cap 7:06*] to the Registrar indicating that the Prosecuting Authority did not support the conviction of the appellant.

The concession filed by the State, in our, view was well given. We say so for the following reasons.

The facts upon which the conviction was based were as follows.

Appellant and one Richman Chigodora entered the complainant's office. The complainant, who is the Officer Commanding Mutare Police District, greeted the two and offered them seats. Immediately upon taking seats, the appellant hurled certain accusations against the complainant which included the allegations that complainant had forced applicant to give a statement to police. There was also an allegation that complainant had sent his officers to arrest him instead of protecting him. Applicant is said to have accused complainant of being a corrupt officer who wined and dined with thieves. He threatened to air his grievances against the complainant with the President. The court found that the above constituted a contravention of s 177 of the Criminal Law Code.

The essential elements of this statutory offence are the following:-

a) Accused, in a public place,
b) makes a statement that is
c) false in a material particular or
d) does any act in the presence of
e) a police officer who is on duty or off duty,
f) knowing that he or she is a police officer or
g) realising that there is a risk that he or she is a police officer intending to or realising that there is a risk or possibility of rendering feelings of hostility towards such officer or the police force to contempt, ridicule or disesteem.

In order to secure a conviction the State had to prove that the appellant had the necessary requisite intention. In terms of s 13 of the Criminal Code, the test for intention is, whether the accused intended to engage in conduct or to produce the consequence. Section 14 of the Criminal Code provides that where knowledge is an element of a crime the test is whether the accused had knowledge of the relevant fact or circumstance. Thus the accused will have legal intentions if he or she engaged in conduct realising that his conduct might cause the consequence and, having realised this, the accused continued to engage in the conduct regardless as to whether or not the consequences followed. Applying this approach to the fact of the case it seems to me that at most the appellant may probably have engaged a drunk or disorderly conduct. It is common cause that the appellant was drunk. He fell down on two occasions inside the complainant's office. He was shouting and "hitting the tables in a disorderly manner" according to the evidence led, by the State and accepted by the court.

Clearly, he was unhappy with how the complainant had treated him. He had a grievance which he wished to put across. He did so in a manner which upset the complainant. In the circumstances, it can hardly be said that the appellant intended to engender feelings of hostility towards either the complainant or the police force or that he intended to expose the complainant or the police force in general to conteryot or ridicule or disesteem.

The record shows that initially the accused was charged with "drunk and disorderly conduct in a public place."

The matter ought to have been prosecuted as such, there was no evidence to show, and the State was unable to prove, an intention to undermine the powers of the police force. The evidence shows that the appellant was drunk and disorderly and no more. How this complainant against the action of the particular police officer could have been considered as

intended to expose the said officer to corrupt, contempt, ridicule or disesteem is not clear. It certainly was not proved by the evidence on the record.

In finding that this was proved beyond a reasonable doubt the learned trial magistrate fell into error.

In the result the conviction is quashed and the sentence is set aside. The judgment of the court *a quo* is substituted with the following:-

"The accused is found not guilty and acquitted."

BERE J agrees _____

Mugadza Chinzamba and Partners, appellant's legal practitioners
Attorney General's Office, respondent's legal practitioners