KUZIWA CHIGWIZURA
versus
THE STATE

HIGH COURT OF ZIMBABWE
HUNGWE & BERE JJ
HARARE, 27 November 2014 and 13 September 2017

Criminal Appeal

J Mutevedzi, for the appellant
Mrs *S. Fero*, for the respondent

BERE J: The appellant who stood as the 2nd accused and his co-accused were arraigned before the magistrate Court sitting at Norton for contravening s 157 (1) (b) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]-dealing in dangerous drugs or alternatively contravening s 157 (1) of the same Act-unlawful possession of a dangerous drug.

After a protracted trial, the appellant was convicted on the main charge and sentenced to 5 years imprisonment of which 1 year was suspended on the usual conditions of future good conduct leaving him to serve an effective 4 years imprisonment.

Dissatisfied by both conviction and sentence the appellant filed this appeal against both.

In attacking the court *a quo*'s decision to convict him, the appellant raised 8 grounds of appeal which can be broken down to basically 3 grounds, viz:

> "(i) the court *a quo* erred in convicting the appellant as an accomplice when there was no evidence to justify such a finding (grounds 1 &2).
>
> (ii) the court *a quo* erred in accepting the version of the State and rejecting that of the appellant when his version of events was reasonably true and believable (grounds 3, 5, 6 and 8).
>
> (iii) the court *a quo* erred in not providing reasons for the conviction of the appellant (ground 4)."

As against sentence, the appellant felt that the effective sentence of 4 years imprisonment induces a sense of shock and was therefore incompetent.

The State has opposed the appeal in its entirety. The appellant's defence in the court *a quo* was that he did not know that the twelve bags contained dagga. The appellant said he had been hired from Mbare to carry rice so he thought the dagga was the rice he was hired to carry.

In summarising the evidence that was presented in court, the learned magistrate reasoned as follows:

> "Accused 2 denied the allegations on the basis that he had only been hired by a person who upon seeing the police had run away. From the State witnesses' evidence accused 2 had come with accused 1 and had remained behind until accused 1 had requested that the track be allowed to get in to load his relish for his family. It was when the guards and accused persons were going to the truck that accused 2 is said to have confirmed that the bags contained dagga. Accused 2 is alleged to have tried to run away when the police came. He told the court that he ran away because he had seen the other person who had hired him run away. If accused 2 did not know about the dagga he should have remained calm when the police arrived because he knew nothing. The fact that he tried to run away shows that he had something to hide or that he knew something about the dagga.
>
> Accused one and two told the court that they did not know each other and they were together in the case. They were acting in connivance. They thought if they told the court that they did not know each other the court would be convinced otherwise. The evidence by the State was believable and consistent. It would not have been mere coincidence. The dagga involved is quite large quantity. Accused person must have been dealing in dagga and not just mere possession. The court will therefore find the accused person guilty of possessing drugs for purposes of dealing with it."[1]

The respondent's counsel argued that the sound reasoning by the court *a quo* cannot be faulted.

I agree. A reading of the evidence recorded by the court *a quo* juxtaposed with the reasoning in the judgment is clearly flawless.

The defence counsel sought to argue in this appeal that the court *a quo* was wrong in choosing to accept the evidence, of the State witnesses and rejecting the evidence told by the appellant. I thought our law is settled in this regard. The credibility of witnesses remain the domain of the trial Court and an appeal court can only interfere with the trial court's findings on witnesses' credibility where there has been a clear misdirection or mistake of fact or where the basis upon which the Court *a quo* reached its decision was wrong and this must be demonstrated by the appellant.

[1] Record p 8-9 (last two paragraphs)

See among other cases, *S* v *Katsiru*[2] and *S* v *Mpetha and Ors*[3]. *In casu* the court *a quo*'s findings on the witnesses' credibility was well grounded. The evidence was as clear as it came. There was nothing meaningful submitted by the appellant's counsel which could have persuaded the appeal court to interfere with the sound findings of the court *a quo*.

The whole of Chapter XIII of the Code as amended is devoted to defining and explaining the role of accomplices and how they should be punished. The appellant's conduct fitted within the conduct of accomplices as defined in this chapter.

There was everything pointing to the fact that the appellant was quite aware that he was going to carry dagga as opposed to rice, hence his abortive attempt to run away from the police when he realised the net was closing on him.

As regards sentence, again there was nothing advanced in this court which would warrant the Court to interfere with the sentence of the Court a quo's wide discretion. One needs go no further than the reasons given by the court *a quo* to appreciate that the sentence that was eventually metted out was indeed appropriate.

In the final analysis the appeal is dismissed in its entirety for lack of merit.

HUNGWE J agrees ……

Mutamangira and Associates, appellant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners

[2] 2007 (1) ZLR 364
[3] 1983 (4) SA 262