

**PARTY MHLANGA**

**Versus**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
CHIWESHE & CHEDA JJ  
BULAWAYO 30 SEPTEMBER & 7 NOVEMBER 2002

*Ms A. Masawi* for the appellant  
*Mrs I. Nyoni* for the respondent

Criminal Appeal

**CHEDA J:** This is an appeal against conviction by the magistrates' court, Bulawayo. The brief facts according to the state are that appellant bought a pick-up truck at a public auction, which pick-up used to belong to Vita Foam. Sometime in September 1999 appellant stopped Vita Foam employees in the city centre as they were travelling in a company car clearly marked Vita Foam. He introduced himself to the two employees as P Tshuma an Insurance Assessor with NICOZ Insurance Company. He further advised them that he wanted to come and collect a canopy for the accident damaged truck which he was then driving.

Mr P Ndlovu who was then driving the Vita Foam motor vehicle invited him to come to the company premises to collect the canopy. Appellant subsequently went to Vita Foam still holding out as an insurance assessor and collected the canopy.

Complainant later discovered that appellant was in fact not an insurance assessor and was not P Tshuma, a report was then made to the police whose investigations subsequently led to his arrest. The value of the canopy was \$20 000 and was recovered.

The state called P Ndlovu whose evidence was that he was employed by Vita Foam as a foreman. On the day in question he was driving a motor vehicle clearly inscribed with Vita Foam letters when appellant stopped him. Appellant then introduced himself as a P Tshuma an employee of NICOZ and further stated that they had bought the pick-up vehicle which he was driving and they had since repaired it. Appellant went further to state that they had left the canopy behind and he wanted to collect it. The witness believed him and advised him to come and collect it, which he did.

The next witness was Billy Moyo who was in the company of the 1<sup>st</sup> witness on the day in question. His evidence is in all fours with that of the first witness.

The next witness was Charles Green who is employed as a Distribution Manager by Vita Foam. He told the court that the pick-up in question was once involved in an accident to an extent that it was a write off which resulted in them handing it over to NICOZ Insurance Company, but before they did so, they removed the canopy as it was not insured by NICOZ. He discovered that the said canopy was missing from their workshop when he wanted a better canopy between the two which were in the workshop. He was then advised by P Ndlovu the 1<sup>st</sup> witness that the canopy which had been removed from the accident damaged pick-up had been taken by Mr Tshuma of NICOZ. Investigations were carried out which led to the arrest of the appellant. However, efforts to take the canopy from the appellant was met with stiff resistance but it was eventually recovered through police intervention.

The last witness was Henry Tshuma the Regional Manager for NICOZ. His evidence was that he did not know the appellant and had not directly dealt with NICOZ neither did he know where they operated from. It was further his evidence that according to the police report and that of Quicks, the towing company, the said pick-up did not have a canopy. The state closed its case.

The appellant gave evidence in his defence. He stated that he was a Director of Skyline Taxis and that he was in the business of buying salvages from insurance companies and had been doing so for ten years. It is also his evidence that when he met P Ndlovu in the city centre he advised him that he had bought the motor vehicle which he was driving and went further to enquire as to whether there were any other accessories that had been left behind. P Ndlovu is said to have replied that there was a canopy, a jack and a spanner but the spare wheel could not be located or found. He denied misrepresenting that he was P Tshuma from NICOZ.

It was the finding of the court *a quo* that the state's witnesses gave their evidence very well and were therefore credible. In fact Messrs P Ndlovu and Billy Moyo collaborated each other in all material respects and I find no reason to interfere with the trial court's assessment of their evidence. The appellant's evidence was very far from convincing. He met these witnesses in the city and deceived them into believing that he was entitled to a canopy which was at their workshop. He denies misrepresenting himself as P Tshuma of NICOZ. What remains unclear is why he was not keen to return the canopy to the complainant when called upon to do so. His behaviour, in my view, is that of a person with a guilty mind, otherwise the most

noble thing to have done was to merely take back the canopy and have the matter resolved amicably. He, however, resisted both the surrender of the canopy and was not prepared to listen to the voice of reason. His explanation for his behaviour is to say the least strange and cannot be believed as being any way near the truth. The fact that it had to take the police to recover the canopy speaks volumes of his guilty mind and his intention to benefit from this ill gotten property. Appellant certainly did not behave like an honest person. There is no good reason why Messrs P Ndlovu and Billy Moyo would have lied against him.

The suggestion by *Ms Masawi* his legal practitioner that P Ndlovu lied in order to cover up for his error and/or inefficiency which ultimately led to the release of the canopy is without merit in my view for the reason that when asked by his superior Mr Green he innocently advised him that the canopy had been collected by Mr Tshuma of NICOZ. If indeed he wanted to lie he would have found any other reason to justify his erroneous release of this canopy.

I find that the court *a quo* properly assessed all the evidence by the witnesses and objectively concluded that the state witnesses were credible and convincing while the appellant was an unsatisfactory witness who failed to give a reasonable explanation of his conduct. His refusal to voluntarily hand over the canopy which he purports to have genuinely obtained from the complainant buttressed both his state of mind and actions when he confronted the complainant and Billy Moyo on the day in question.

I find no misdirection on the trial court's finding and accordingly the appeal against conviction is dismissed.

Chiweshe J ..... I agree

*Lazarus & Sarif* appellant's legal practitioners  
*Attorney-General's Office* respondent's legal practitioners