

FORTUNE NHUMBA SITHOLE

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
NDOU & MATHONSI JJ
BULAWAYO 14 AND 24 NOVEMBER 2011

L. Mcijo, for the appellant
T. Makoni, for the respondent

Judgment

NDOU J: After hearing the parties' legal practitioners we dismissed the appeal against sentence and indicated that our reasons will follow. These are they. The background facts of the case are the following. The appellant left Zimbabwe sometime in January 2010 for South Africa where he was offered accommodation by the complainant. He abused the trust bestowed on him by the complainant.

Instead of showing gratitude he decided to steal from the complainant when the latter had gone to work. He was left alone in the complainant's residence in Johannesburg. During the absence of the complainant the appellant hired a motor vehicle and loaded the stolen property which included, *inter alia*, LCD 37 inch colour television set, a Sony Home Theatre, a Dell computer, a Samsung computer, a Samsung "Tower" computer and Sony digital video recorder. The appellant came back to Zimbabwe with the stolen property. The complainant returned to her place of abode (in Johannesburg) and discovered that the appellant had disappeared with the said stolen property. She made a report to the South African Police. Whilst the latter were still investigating, one Sikhulekile Khumalo, who is related to both the appellant and the complainant and who had been to Zimbabwe, told the complainant that she had seen her stolen property at the appellant's residence in Bulawayo. The complainant and Sikhulekile travelled all the way from Johannesburg to Bulawayo to report the matter to the Zimbabwe Republic Police. The latter arrested the appellant and recovered the entire stolen property. The total value of the stolen property is US\$2 200,00. The appellant pleaded guilty to the charge before a Bulawayo Magistrate. He was convicted and sentenced to four years imprisonment with one year suspended on the usual conditions of future good behavior. The appeal is against sentence only. We accept that the fact that the appellant is a first offender who pleaded guilty is mitigatory – *S v Sidat* 1997 (1) ZLR 487 (S) at 493B and *S v Bhuka* 1995 (2)

ZLR 130 (S). *In casu*, there is no evidence that the trial magistrate paid lip service to this factor. In fact, she accorded it due weight. The same applies to the appellant's youthfulness and his personal circumstances. The problem facing the appellant is that all these mitigatory factors are over shadowed by seriousness of his criminal conduct. The property was not recovered as a result of the appellant's change of heart. The recovery was in fact fortuitous. The property had been moved from South Africa only to be recovered in Zimbabwe. The appellant is a brazen thief who hired a vehicle and transported the property all the way from Johannesburg to Bulawayo. He crossed the border into Zimbabwe. If it had not been for Sikhulekile and her tip-off the complainant would not have recovered anything. The appellant's moral blameworthiness is heightened when considering that the appellant breached the trust placed on him by the complainant. This trust extended to accommodation and was of such a degree that the complainant left his/her home in the care of the appellant. This was a clear cunning conduct and deception. We find that there is no misdirection on the part of the trial court. Accordingly we dismissed the appeal against sentence.

Mathonsi J I agree

Lazarus & Sarif, appellant's legal practitioners
Criminal Division, Attorney-General's Office, respondent's legal practitioners