

HUSSEIN NOOR

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA AND MATHONSI JJ
BULAWAYO 30 MAY & 2 JUNE 2011

R Mahachi for the appellant

T. Hove for the respondent

Criminal Appeal

KAMOCHA J: At the end of arguments presented by both legal representatives we dismissed this appeal against sentence and indicated that our reasons for so doing would follow in due course. These are they.

The appellant pleaded guilty to a charge of contravening section 179(1) of the Criminal Law (Codification and Reform) Act [Chapter 9:23]. It being alleged that from 19 to 26 February 2010 he wrongfully and unlawfully impersonated a public official.

The facts that he admitted *in toto* were as follows:

“On the 19th February 2010 the accused who is the managing director of Vilox Investments Group approached Simbarashe Chivaura a legal practitioner employed by Mashayamombe and Company Attorneys situated at Salaamat Mews suite 301 3rd floor, Bulawayo. Accused sought legal advice in drafting a letter of proposal as he intended acquiring 51% shares from Lobels Biscuits, Bulawayo in line with the Indigenisation and Economic Empowerment Act. After having his draft edited and printed on his company letterheads by Simbarashe Chivaura, the accused then delivered the letter to Lobels Biscuits at the corner of Birmingham and Luton Streets, Belmont, Bulawayo.

Later on the same date the 19th February 2010 accused telephoned complainant to ascertain if he (complainant) had received his letter. Complainant indicated that he had received the letter.

On 22 February 2010 accused phoned Charmaine Fletcher, the personal assistant to the managing director posing as Simbarashe Chivaura from the President’s Office. Accused indicated that he was making a follow up to the Vilox Investments group proposal. On 23 February 2010 accused again phoned Lobels Biscuits posing as Collin Coetzee and

that he was checking on the progress in respect of Vilox Investments group's shares proposal. On the 24th day of February 2010 accused personally visited Lobels Biscuits and was attended to by the human resources manager Andrew Dinhidza. Accused highlighted that the complainant had to make serious considerations of the proposal as there were very big and influential people involved.

Between the 24th and 26 February 2010 accused made phone calls from land line number 231148 and cell phone number 0914137464 to Lobels Biscuits still posing as either Simbarashe Chivaura or Collin Coetzee. At some instances accused would demand an urgent and positive response towards his proposal. He further lied to the managing director of Lobels Biscuits that His Excellency President Robert Mugabe and Minister Saviour Kasukuwere were soon going to tour complainant's company."

When the essential elements were canvassed with him he admitted that each time he phoned the complainant and when he visited the complainant he held out that he was a member of the Central Intelligence Organisation (CIO).

The trial court was of the view that no other form of punishment other than a term of imprisonment was appropriate in the circumstances. The court reasoned that what the accused did would bring the name of the government into disrepute. His actions would further discredit any good intentions the Indigenisation and Empowerment Act may have. Moreso as the appellant was alleging that senior government officials were involved in such malpractices. The court arrived at the conclusion that severe and deterrent sentences should be meted against the miscreant so that others with like minds could be deterred.

The court then sentenced the accused to undergo 8 months imprisonment. In terms of section 179(1)(b) a person who is convicted of impersonation is liable to a fine not exceeding level six or imprisonment for a period not exceeding one year or both.

The 8 months imprisonment imposed by the trial court is within the limit provided by law. The appellant was persistent in his behavior leading the trial court to the conclusion that the only suitable form of punishment was a term of imprisonment. The trial magistrate appears to have exercised his discretion properly, in my view, when arriving at the sentence which was finally imposed.

The sentence might have been on the steep side. This court may have imposed a somewhat different sentence had it been the trial court. That, however, is no reason for this court to interfere with judicial discretion properly exercised. The appellant did not suggest that the sentence was excessive so as to warrant interference by this court. This court, therefore, would have no basis for altering the trial court's sentence.

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In the result the appeal fails and is accordingly hereby dismissed.

Mathonsi J I agree

Messrs T. Hara and Partners, appellant's legal practitioners
Attorney-General's Office respondent's legal practitioners