

RANGARIRAI MATIMURA
versus
THE STATE

HIGH COURT OF ZIMBABWE
ZHOU & CHIKOWERO JJ
HARARE, 23 & 27 March 2023

Criminal Appeal

P Tsimba, for the appellant
K H Kunaka, for the respondent

CHIKOWERO J:

1. This is an appeal against conviction only.
2. The appellant was convicted of impersonating a public official in contravention of s179 (1)(a) of the Criminal Law Code and of reckless driving as defined in s53(2) of the Road Traffic Act [*Chapter 13:11*] (the Act).
3. The two issues that arise in this appeal are these. First, whether the trial court's factual finding that the appellant impersonated a public official defies reason and common sense. Second, whether the appellant's admitted manner of driving amounted to reckless driving.
4. We find against the appellant on both issues. Consequently, we uphold the judgement rendered *a quo*.
5. In respect of the charge of impersonating a public official, the conviction was grounded on the assessment of the credibility of the prosecution's witnesses by the trial court. It found that those witnesses were credible and corroborated each other. The law is that the assessment of the credibility of witnesses is the domain of the trial court and ought not to be disregarded by the appellate court unless satisfied that it defies reason and common sense. See *S v Soko* SC 118/92; *S v Mlambo* 1994 (2) ZLR 410 (S); *S v Chingurume* 2014(2) ZLR 260 (H).

6. Going through the record, we are satisfied that the appellant was correctly found to have impersonated a Zimbabwe Anti- Corruption Commission (ZACC) official. He made the impersonation to Nomore Tabana who was the officer in charge of Chitungwiza Traffic. This was calculated to obtain an advantage for himself over Charles Zulu, the motorist with whom the appellant had been involved in an accident. Tabana's evidence was so detailed and clear as to leave the circumstances of the impersonation manifest.

Indeed, when asked to produce his identification documents to confirm that he was a ZACC official, the appellant produced his ZANU (PF) membership card as well as his Southern Africa Regional Anti- Corruption Organisation (SARACO) card. ZANU (PF) is the governing political party in this country. The trial court found that the appellant produced his ZANU (PF) membership card to lend weight to his effort to obtain an advantage for himself over Zulu. Since the appellant was not in fact a ZACC official, he, together with the ZANU PF membership card, produced the equally irrelevant SARACO card. Before producing these cards, and impersonating a ZACC official, the appellant was found to have uttered the following words to Tabana:

“Mother, we work together?”

It was this utterance that prompted Tabana to ask the appellant to name his office. This then drew the response that the appellant was a ZACC official and the production of the two cards

7. The second state witness, Deron Dzobo, corroborated Tabana's evidence. He too was a police officer stationed at Chitungwiza Traffic.
8. The evidence of these two witnesses was rightly found to have withstood the test of Cross- examination. Indeed, the record also shows that the appellant returned to Chitungwiza Police Station Traffic yard the following morning whereupon he apologised to Tabana that he had lied the previous day in claiming that he was a ZACC official.
9. We commend counsel for the appellant for conceding that at no point during the trial did the appellant explain why he produced his ZANU (PF) membership card, if it was not to aid in swaying Tabana that he was a ZACC Official. That membership card was produced to intimidate the police officer who, to her credit, stood her ground. In

similar fashion, she did not curve in to the appellant's request that Zulu's version of how the accident occurred be not heard by the police lest he would not be able to make Zulu foot the cost of repair of his, the appellant's, accident damaged motor vehicle.

10. We are amply satisfied that the trial court did not err in rejecting the appellant's defence that he told Tabana that he was a SARACO Official. According to the clear evidence on record the appellant impersonated a ZACC official before he was asked to produce his identification card. Tabana and Dzobo could not have been confused by the two cards to think that the appellant had said he worked for ZACC when in fact he had said he was employed by SARACO. If he had said he worked for SARACO and had not mentioned ZACC, then it behoved him to explain why he also produced his ZANU (PF) membership card. As already pointed out, he did not tender such explanation.

11. As for the appeal against conviction for reckless driving, the appellant admitted at the trial that he raced past Zulu's car, entered the lane wherein Zulu was travelling and, without any warning, braked and stopped in front of that witness' vehicle. The inevitable happened. Zulu's vehicle rammed into the appellant's car. The only issue at the trial was whether the appellant's manner of driving in the circumstances amounted to reckless driving. Why the appellant drove in that fashion was irrelevant. In *S v Mtizwa* 1984(1) ZLR 230 (H) the court defined reckless driving, at 234A, in these terms:

"Recklessness, on the other hand, connotes not only a wilful disregard for the safety and rights of other road users, but also cases of indifference or rashness or inadvertence in which consciousness of consequences plays no part *S v Van Zyl* supra at 558"

See also *S v Mapeka and Anor* 2001(2) ZLR 90(H); *S v Chalta and ORS* 1998(1) ZLR 213(H).

In our judgement, in driving as he did, the appellant not only wilfully disregarded the safety and rights of Zulu, who was also using the same road, but was indifferent to the consequences of his driving conduct. The appellant was correctly convicted of reckless driving as defined in s 53(2) of Act.

12. In the result, the appeal be and is dismissed.

CHIKOWERO J

ZHOU J..... 1 agree

Hungwe and Partners, appellant’s legal practitioners
The National Prosecuting Authority, respondent’s legal practitioners