

**IN THE LABOUR COURT OF ZIMBABWE
HELD IN HARARE, 27TH JANUARY, 2014
AND 14TH FEBRUARY, 2014**

**JUDGMENT NO. LC/H/59/14
CASE NO. LC/H/51/13**

FELIX MAKONYE

APPELLANT

**MINISTER OF TRANSPORT, COMMUNICATIONS
AND INFRASTRUCTURAL DEVELOPMENT**

RESPONDENT

Before The Honourable G. Musariri: Judge

For Appellant : Mr C. Kwirira, Attorney

For Respondent: Mr T. Dodo, A.G's Office

MUSARIRI, G:

Appellant appealed to this Court against his dismissal from employment by Respondent. The grounds of appeal were two-fold as follows;

- “1. The Public Service Commission grossly erred in relying upon the evidence of Blessing Chirombo Gukuchu in finding the Appellant guilty when the said witness had patently lied to the Commission in view of his evidence made under oath in the Criminal Court.
2. The Commission further erred when it failed to find that on the whole, all the other witnesses exonerated the Appellant and there was no suggestion that he had facilitated the production of the licence in issue.”

Filed of record is an excerpt from criminal proceedings against Appellant. The aforementioned Chirombo gave evidence at the trial. Appellant drew the Court's attention to the following exchange during cross-examination of Chirombo.

“Q Before you were arrested did you know the accused?

A. I only knew his name.

Q. So you did not know him?

A. Yes I had not met him.

Q. You never told the accused about the issue of your provisional licence?

A. I never talked to him.”

Appellant, through his attorney, argued that this piece of evidence contradicted Chirombo’s statements at the initial inquiry held by Respondent. At the inquiry Chirombo identified and implicated Appellant in the issuance of the fake licence.

However Chirombo’s evidence must be taken in its totality. During the same trial, before his cross-examination, he testified thus,

“Q Do you know the accused?

A Yes

Q How do you know him?

A Through my uncle Ketras Marimo

Q Can you explain why accused in court?

A After I took my provisional, it got lost and I wanted to get a licence.

Q When was that?

A Last year in October

Q Proceed

A He told me he knows a friend who work at CVR. He told me that he wanted \$50.

Q Who wanted the \$50?

A I think it was needed by the accused but I did not give him. I gave my uncle.”

This portion of Chirombo’s testimony shows that Chirombo met Appellant and they discussed the issuance of the licence. Appellant asked for \$50 to facilitate the deal with his contact at CVR. Read in context, the evidence implicates Appellant. It is consistent with Chirombo’s conduct and statements at the initial inquiry held by Respondent. No explanation was tendered for the

apparent contradiction in Chirombo's evidence within the same trial. The contradiction discredited him in the Criminal Court. But does that discredit him for the purposes of the disciplinary proceedings? I think not. Why? Because his evidence-in-chief implicated Appellant. That evidence is consistent with his evidence at both the inquiry and the subsequent hearing conducted by Respondent. In this Court, it unnecessary to explain inconsistencies in a criminal trial. To hold otherwise would invite parties to seek review of criminal proceedings by civil courts. That is not provided for by the law. In any event, the extract relied upon in casu is not certified by the Clerk of Court.

On the basis I find that the appeal to this Court lacks merit.

Wherefore it is ordered that,

- 1. The appeal is hereby dismissed, and**
- 2. Each party shall bear its own costs.**

G. MUSARIRI
J U D G E