

DISTRIBUTABLE (44)

Judgment No. SC 52/03
Civil Appeal No. 183/95

SITHABILE TSHUMA v THE STATE

SUPREME COURT OF ZIMBABWE
CHEDA JA, MALABA JA & CHIWESHE AJA
BULAWAYO, JULY 28, 2003 & JANUARY 26, 2004

The appellant in person

L Masuku, for the respondent

CHEDA JA: The appellant was charged before a magistrate in Gwanda with theft, alternatively with contravening s 14(1)(b) of the Miscellaneous Offences Act [*Chapter 68*] (now s 12(2)(b) of *Chapter 9:15*). She pleaded not guilty to both, but was convicted on the alternative charge. She was sentenced to pay a fine of \$400.00 or, in default of payment, serve two months' imprisonment with labour. In addition she was sentenced to a further three months' imprisonment with labour which was suspended for five years on condition she does not, during that period, commit any offence of which dishonesty forms an element of the charge for which upon conviction she is sentenced to imprisonment without the option of a fine. She now appeals against conviction only.

The case against the appellant was that police, acting on information received, went to her residence at Johunda Township in Gwanda, searched the premises and found property that was believed to have been stolen. The search was carried out in the presence of the appellant's sister while the appellant was away at Beula Health Centre where she was employed as a State certified nurse.

The appellant failed to give a satisfactory explanation of her possession of the said goods. In her defence outline, she said she never stole property from Beula Clinic where she went on relief duties. She disputed that the property found in her house originated from Beula Rural Health Centre.

The evidence led from a member of the Criminal Investigation Department was that he went to the appellant's residence and conducted a search. He recovered the property listed on the indictment, that is, two green curtains, two yellow curtains, four white sheets, three cotton blankets, ten disposable syringes, four needles, three small linen sheets, eight gauze bandages, three small towels and four winter sheets.

Ms Noko, a senior clerk at Antelope District Hospital, went to do a stock check at Beula Clinic and found that the following property was missing – two long green curtains, three short yellow curtains and three baby wrappers. She said the property recovered by the police was similar to the property missing from Beula Clinic.

Janet Ncube said she was the housekeeper at the appellant's residence. She said on a Thursday morning the police arrived and asked for the appellant. She told them she had not seen her. On request, she led them to the appellant's bedroom which they searched and from which they recovered some syringes and thermometers. In different boxes they recovered the items referred to in the indictment. She said only the two of them, that is, herself and the appellant, had access to that bedroom. She also said that before the police came she was not aware of the recovered property in the bedroom.

In her defence the appellant said she stayed in the house in Johunda Township as well as in Antelope where she was employed. She said she got Janet to stay with her after thefts occurred at her house despite the fact that the house would be locked. She regarded Janet as a sister.

The appellant further stated she did not know anything about the property except the clothing in which the property was alleged to have been wrapped. She accepted that such property is found in Government Departments. She denied removing the property from Beula Health Centre. She did not know what happened to those that the witness Noko said were missing from Beula Clinic. She said the curtains were similar to the ones missing from Beula Clinic but she could not say they were the same ones.

It is clear from the evidence that the appellant was sent on relief duties to Beula Rural Health Centre from Antelope Hospital.

When property similar to that used in hospitals was recovered in her house in Gwanda, a check was made of stocks at the Beula Rural Health Centre where she was working at the time. It was established that curtains similar to those found at her house were missing from Beula Clinic. She could not give any satisfactory explanation when confronted by the police. Her allegation of someone stealing from her house without any trace of a break-in suggests that she suspected her former employee could have been doing that. However, even if that was so, I do not think

the former employee would steal property from the appellant's place of work and put it in her house to trap her.

I am satisfied that property which was reasonably suspected to have been stolen was found in the appellant's possession.

The appellant suggested that she was not in possession of the property as she was not there, but having the property wrapped in clothing belonging to her in a house which belonged to her and was under her control establishes her possession of the property beyond doubt.

Accordingly, the conviction for contravening s 14(1)(b) of the Miscellaneous Offences Act is to stand.

The appeal is dismissed.

MALABA JA: I agree.

CHIWESHE AJA: I agree.