

REPORTABLE (ZLR 62)

Judgment No. SC 44/06

Criminal Application No. 242/06

ERNEST SIGAUKE v THE STATE

SUPREME COURT OF ZIMBABWE
HARARE, SEPTEMBER 27, 2006

N Mushangwe, for the applicant

V Shava, for the respondent

Before: CHEDA JA, in Chambers in terms of r 34 of the Supreme Court Rules.

The applicant was charged with theft of a motor vehicle at the High Court.

He was convicted and sentenced to ten years' imprisonment with labour of which two years was suspended on condition that he pays compensation to the complainant in the sum of \$510 000,00 on or before the end of the year 2003.

It was recorded as admitted by the defence that the complainant's vehicle was stolen on 16 November 2000.

It was established that the vehicle was driven across through Nyamapanda Border Post into Mozambique by a person using a passport that had details of one Cecil Matondo on 17 November 2000.

The person claimed to be the owner of the vehicle. The particulars of the vehicle had been exchanged for number 723-578 X which were identical to the motor vehicle belonging to one Gerald Chitsanga.

It was also established that Gerald's vehicle remained in his possession with its correct number plate affixed to it and was never removed.

It was established that Cecil Matondo who resided at Zengeza 1 had been robbed of his passport number ZA902992 and other identification particulars. The robbery was reported at St Marys' Police Station.

On 29 June 2001 the police, acting on information received, searched the applicant's residence and recovered Matondo's Passport No. ZA 902992 but bearing the applicant's photograph.

It was established that the other particulars of the stolen vehicle had not been changed except for the number plate.

The applicant admitted having been in possession of Matondo's passport with the applicant's photograph.

It is obvious that the applicant does not dispute that on or about November 2000, when the vehicle was stolen and driven to Mozambique, the applicant was in possession of the stolen passport.

Further to that, I am not convinced that some other person whose face differed from the photograph on the passport could go to the Immigration Department, present such a passport and used it to cross the border.

The applicant himself is not able to say who, or that Chihota's face resembles his to the extent that it could have misled immigration officials into believing that the applicant's photograph on the passport matched Chihota's face.

The trial court was justified in disbelieving the applicant and holding him as responsible for driving the stolen vehicle across the border.

Whether he stole it himself or assisted in removing the stolen vehicle, once he presented it at the border as his, he was involved in the theft.

I need not deal with the other issues raised in the application, as I am satisfied that there are no prospects of success in the appeal.

The application is dismissed with costs.

Mutezo & Company, applicant's legal practitioners