

JOANA PETRONELLA SIBANDA v THE STATE

SUPREME COURT OF ZIMBABWE
EBRAHIM JA, MUCHECHETERE JA & SANDURA JA
HARARE, MAY 4 & JUNE 1, 1998

H Zhou, for the appellant

J Matimbe, for the respondent

MUCHECHETERE JA: The appellant was, on 31 January 1997, convicted of five counts of fraud by the magistrate's court, Harare. All counts being treated as one for sentence, she was sentenced to a fine of \$5 000,00 or, in default of payment, ten months' imprisonment with labour. She appeals against conviction only.

The State alleged that between May and October 1995 the appellant, whilst employed by the Zimbabwe Banking Corporation Limited ("Zimbank") as a bank teller, gave out and pretended that some cheques had been presented to her by the payees and so paid out the monies when she knew that the cheques had already been paid out by other tellers. This resulted in Zimbank being defrauded of a total sum of \$13 773,82.

The undisputed facts in the matter are that at the relevant period the appellant was working at Zimbank's Westend Branch. A company named Almin Metal Industries Limited ("Almin") held its salaries account with that branch. On five

separate occasions that pertain to the offences five cheques drawn from Almin's salaries account were presented to and processed by the appellant's colleagues at the branch. Subsequently the appellant also processed cheques which had the same details as those that had been processed by other tellers at the branch.

When the offences were discovered only three cheques which had been processed by the appellant's colleagues and which contained the same details as those the appellant had subsequently processed were recovered. The rest of the cheques, including all those the appellant had supposedly cleared, were not recovered.

The sole issue to be resolved is whether any cheques had been presented to the appellant at all or whether she simply took details from cheques that had already been presented to her colleagues and misrepresented that they had been presented to her and thus stole some money from her employer.

The bulk of the evidence led was circumstantial. Mr *Matimbe* for the State, submitted that the cumulative effect of the facts proved beyond reasonable doubt that the appellant committed the offences as alleged. These are to the effect that the appellant did her transactions more than two hours or some days after the other teller would have processed the same cheque. This meant that the appellant had the opportunity to gather details about cheques which would have already been processed by others and use the same information as if she would have received the cheques from payees. There was also evidence to the effect that all cheques which the appellant purportedly processed were not found. In this connection it is hard to

imagine that someone could be involved in the cheques' disappearance without the appellant's involvement.

Further, no other teller was found to have experienced the same predicament as the appellant. There was no acceptable reason as to why she would alone be targeted for the treatment she is supposed to have experienced. There was also evidence to the effect that the appellant was aware of the problem involving scrap cheques belonging to Almin through a letter which had been written to her workplace. She thus took advantage of the letter in the hope that she would have a good defence in the event of being caught. The letter was written in June 1994 and the problem involving the cheques emerged in June 1995. The delay in the discovery could be attributed to the fact that before then the appellant was not a teller but was working in other departments. She admitted to also having, during the five years at the branch, worked in the foreign exchange and enquiries and ledgers departments. And in the ledgers department she had free access to where processed cheques were kept. That gave her the opportunity to use cheques which had already been processed by others.

As for the scrap cheques belonging to Almin, Mr *Matimbe's* submissions were to the effect that they were genuinely fake and that any reasonable teller would have known they were fake. The State witness, Silent Clement Gorondo, said as much. According to him, the cheques had no numbers and authorised signatures and could not therefore have been presented at a bank. He also submitted that the possibility that Almin was using two identical cheques should be discounted. This is because after they discovered the problem with their cheques in 1994 they were more on their guard. And, in any case, they stood to gain nothing by issuing

two cheques. He also submitted that the cheques involved in this case are of relatively low value. And that if scrap cheques had fallen into the wrong hands of criminals through negligence then cheques involving huge amounts of money could have been presented to the appellant. This, further, discounts the possibility that the scrap cheques were used.

Lastly, Mr *Matimbe* submitted that it was hard to imagine that two cheques which were identical in every respect could be issued by one account holder and then only one teller would be the subsequent possessor of the second cheque. And that it was equally strange that cheques were issued only in twos and not in threes or more.

I agree with Mr *Matimbe's* submissions. The only reasonable inference to be drawn from the above factors is that the appellant extracted details from cheques which had been processed by others. The possibility that she acted in concert with her supervisor cannot be ruled out. In the circumstances, the conclusions reached by the learned trial magistrate are unassailable.

In the result, the appeal is dismissed.

EBRAHIM JA: I agree.

SANDURA JA: I agree.

Masunga & Associates, appellant's legal practitioners