

PETER TANDI
versus
THE STATE

HIGH COURT OF ZIMBABWE
MUZENDA & SIZIBA JJ
MUTARE, 12 March 2025

Reasons for Judgment

MUZENDA J: On 12 March 2025 this records was brought to my attention by the Deputy Registrar informing me that there is need for the court to provide reasons for the order given on review of the record on 15 January 2025. Unfortunately there was no leave filed on behalf of the appellant to appeal to the Supreme Court. I then decided nevertheless proceed to prepare our reasons for confirming the conviction.

Proceedings in the court *a quo*

On 14 June 2023 appellant appeared in court together with 2 other accomplices, Fungai Abraham Chisuko and Solomon Dziro. All three accused were facing a charge of theft as defined in s 113 of the Criminal Law Code. All pleaded not guilty. The allegations were that on 24 March 2023 at Melbeck Cottage, Troutbeck, Nyanga one or more of them unlawfully took 162 x 3.4m gum poles knowing that Francis Dongo might be so entitled or realizing that there is a real risk or possibility that Francis Dongo might be so entitled to own, possess or control the gum poles intending to deprive him permanently of his ownership, possession or control.

The facts were to the effect that on 21 March 2023 Fungai Abraham Chisuko approached the now appellant looking for transmission poles to buy. Appellant referred Fungai to Solomon Dziro's residence, then accused 2, to be shown where the poles were stashed. Fungai proceeded to Solomon's residence and informed the later that he had been referred by the appellant to him. Solomon phoned the appellant and appellant confirmed that indeed he had referred Fungai and told Solomon to show Fungai the transmission poles which were stacked by the road side at Melbeck Cottage, Troutbeck, Nyanga and appellant further told Solomon to allow Fungai to load

them. Fungai and Solomon did exactly that and complainant caught Solomon and Fungai at the scene and lodged a report to the police.

In its judgment the court *a quo* analysed the evidence led by the respondent. She made a finding that Fungai who was accused got the impression that appellant was the owner of the timber logs. A call history between appellant and the buyer was produced in court. Appellant confirmed communicating with Fungai but to appellant the subject was not logs but timber. The trial court then came to a conclusion that there create make fabrications. She concluded further that appellant made an impression that he had logs for sale. The court *a quo* further made a conclusion that Solomon was employed by the appellant and that on the day in question Solomon contacted appellant about the logs and appellant confirmed and that confirmation prompted Solomon to assist Fungai. The trial court was not satisfied by appellant's explanation as to why he was communicating with Solomon, accused 2.

It was further the trial court's finding that complainant got Solomon's number from the appellant who told complainant that Solomon was on the ground and hence it found that appellant was alive to what was taking place. After analysing the evidence the trial court made a finding that appellant knew that the logs were not his and could not risk going to the scene but referred Fungai to Solomon and made an impression to both that he was the owner of the logs.

The trial court came to a further conclusion that appellant's both *mens rea* and *actus rea* were met and elements of theft as defined in s 113 of the Criminal Code were satisfied. She added that from the evidence on record which *inter alia* included call log the only inference that could be deduced was that appellant made an impression to Fungai and Solomon the he (appellant) owned the logs and sold complainant's logs to Fungai. It was also the trial court's finding that the fact that complainant contacted appellant the moment complainant contacted appellant about the incident meant that complainant knew the chief culprit. Ultimately the trial court acquitted Fungai and Solomon on the basis of them both being victims of appellant's misrepresentation about the logs. The trial court convicted the appellant on the findings summarized herein.

The essential elements of theft are all embracing as well captured in s 113 of the Criminal Law Code. There are aspects of realization of a real risk or possibility that complainant might be so entitled to the property, intention to deprive permanently of ownership possession or control or realizing of such a risk or possibility that such may so deprive complainant of such ownership,

possession or control. It was the factual finding of the trial court that appellant spoke to Fungai about the logs, that appellant directed Fungai to go and see Solomon about the logs. Solomon contacted appellant about the issue of Fungai and logs, appellant confirmed the arrangement and appellant as the owner was going to be paid by the buyer, Fungai. What was left was for the logs to be loaded before payment was made.

The logical reasoning process of the trial court to us is beyond reproach. We were constrained to impugn the judgment of the trial court on the aspect of conviction and that is why we confirmed it.

SIZIBA J agrees _____