PATRICK SAVANHU
versus
THE STATE

HIGH COURT OF ZIMBABWE
ZHOU AND CHIKOWERO JJ
HARARE, 14 and 17 February 2022

Criminal Appeal

E Chiriseri, for the appellant
R Chikosha, for the respondent

ZHOU J: This is an appeal against conviction. The appellant was charged with and convicted of two counts of contravening the Parks and Wildlife Act [*Chapter 20:14*]. In respect of the first count he was found to have contravened s 45(1) (b) of the Parks and Wildlife Act as read with s 128(b) of the came Act (control and hunting of specially protected animals and possession or sale of specially protected animals and products thereof). The conviction in respect of count 2 was contravening s 59(2) (b) of the Parks and Wildlife Act [*Chapter 20:14*] (Control of hunting or removal and sale of live animals and animal products). He was sentenced to the mandatory 9 years imprisonment for count one and was cautioned and discharged for count two. The pangolin scales and two leopard skins which were the subjects of the charge were ordered to be forfeited to the state.

In respect of count one, the appellant was found to have been in possession of 450 pangolin scales which he offered to sell to police detectives who pretended to be buyers. For count two, he was found to have been in possession of two leopard skins without the requisite licence. In his defence outline the appellant denied being in possession of the items referred to above. He stated that the bag which contained the pangolin scales and leopard skins did not belong to him but to one Mpofu whom he was accompanying. He stated that Mpofu was the one who was carrying the bag. He merely gave a lift on his motor cycle to the said Mpofu from a place called Ganye. He did not know what was in the bag or that the items in the bag were for sale. According to him, Mpofu fled upon seeing the police.

Three witnesses, all of them police officers, gave evidence on behalf of the State. These are Vincent Chitsiko, Tapera Mhazha and Blessed Mazarire. Posing as buyers, the three police

officers met the appellant at Gokwe. The appellant was alone. He entered one of the two motor vehicles which the three police officers were using, carrying the bag which had the pangolin scales and leopard skins. Accused had unzipped his red bag and produced the leopard skins and pangolin scales when he was arrested.

Appellant's evidence was that he carried one Mpofu from Ganye to Gokwe. When they arrived at Gokwe Mpofu asked to make a call to his nephew, one Nyangora whom he said he was going to meet at Gokwe Centre. As they were approaching the motor vehicle which had the police detectives Mpofu threw the bag onto the ground and ran away. Appellant stated that he did not know what Mpofu had seen in the car but that he seemed to have identified someone there. The police car was about two metres away when Mpofu escaped. He saw the pangolin scales and leopard skins when the bag was opened. He denied that he had entered into a police motor vehicle when he was arrested.

The court *a quo* believed the testimony of the state witness and found that they corroborated each other. The court found, as testified by the witnesses, that they had first met the appellant near Gokwe Hotel before arranging with him to re-convene at some bushy area. On both occasions the appellant was alone. The three state witnesses did not know the appellant prior to this day and had no reason to falsely implicate him if he had not committed the offence.

It is the settled position of the law that trial court is the one that is better positioned than the appellate court to assess the credibility of the witnesses. An appellate court does not therefore readily interfere with findings of credibility in the absence of a misdirection established. In this case no such misdirection has been shown. Indeed, the appellant does not impeach the findings of credibility made by the court *a quo*. In his first ground of appeal the appellant suggests that there was insufficient evidence to prove his guilt. Nothing can be further from the truth. Appellant was carrying the red bag that contained the pangolin scales and leopard skins. He offered these for sale, and personally got into the motor vehicle belonging to the police detectives. He apologised after being arrested.

His version that the bag belonged to Mpofu who had escaped was correctly rejected. Contrary to the assertion in his second ground of appeal, his defence was not plausible. He does not suggest any plausible reason why the police would let the alleged Mpofu escape if he was ever in existence. They could have chased after him and arrest both appellant and Mpofu, or they would have asked appellant to direct them to Mpofu's residence.

In the third ground of appeal, the appellant states that the evidence upon which he was convicted was inconclusive, biased and contradictory. This court was not referred to any evidence of bias. Also, no contradictions were highlighted both in the heads of argument and in the submissions made by counsel in court. This ground of appeal appears to have been included without giving any thought to the evidence led.

The last ground is that the failure to produce the pangolin scales and leopard skins was a "fatal omission". There was no omission. The existence of the pangolin scales and leopard skins was never challenged by the appellant. He actually admits that the bag had these items. At record 40, line 8, the appellant stated: "I was shocked when the bag was opened and it had scales of pangolin and leopard skin". There was therefore no need to produce evidence to prove a fact which was not in issue.

In all the circumstances, therefore, the appeal is without merit.

In the result, the appeal is dismissed in its entirety.

Magodora & Partners, appellant's legal practitioners