

HOLDEN AT NDOLA

(Criminal Jurisdiction)

ALEX MUDIMBA

Appellant

VS

THE PEOPLE

Respondent

CORAM: Chaila, Chirwa and Muzyamba, JJ.S.

8th September, 1994.

For the Appellant : In person

For the State : Mr. P. Agarwal, Senior State Advocate

J U D G E M E N T

Chaila, J.S. delivered the judgment of the court.

The appellant was charged with the offence of theft by public servant. The facts were that he on 28th day of October, 1990 at Luanshya in the Luanshya District of the Copperbelt Province of the Republic of Zambia, being a person employed in the public service namely police officer in the Zambia Police Force did steal K4,000 cash the property of the Government of the Republic of Zambia which came into his possession by virtue of his employment.

After trial he was convicted of the offence and he was sentenced to six months imprisonment with hard labour but suspended for nine months.

He appealed to this court against conviction only. He has submitted about 19 grounds of appeal in support of his appeal.

/2...The brief

The brief facts of the case were that he at Luanshya on 28th October 1990 detained Alex Mumbi the complainant at Luanshya Police Station. The complainant surrendered K86,050.00 cash to the appellant, and when he was released K4,000 was missing. The police investigated the matter and found that the shortfall was attributed to the appellant. He was charged and successfully prosecuted for theft of this money.

In his grounds, the main argument is that somebody had written in the books different figures. His defence was that he miscounted the sum of money instead of properly counting K82,000 he made a mistake by counting K86,000. In the lower court the evidence showed that the money was received and was counted. It was clearly established that K86,050 was handed to the appellant and was certified correct.

The learned trial magistrate considered the evidence and he came to the conclusion that the appellant had stolen the money. In his grounds the appellant has argued that somebody changed the figures to read K86,000 when in fact it should have read K82,000. He maintained that he mis-counted the money. He further argued that his fellow police officers might have taken the money.

We have considered the evidence on record and grounds of appeal and as the learned Senior State Advocate pointed out, the complainant's evidence was amply supported by the evidence of PWs 5, 6 and 7. He has further argued that the question of miscounting the money could not arise since in the first certificate the appellant himself spoke of K86,000 then later changed the story and said that it was K82,000. He argued that if there

was such miscounting he should have said it in the first instance.

We have taken these arguments into consideration and we are satisfied that there was ample evidence to prove the charge. We find there is no merit in his appeal and the appeal is therefore dismissed.

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M.S. Chaila
SUPREME COURT JUDGE

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D.K. Chirwa
SUPREME COURT JUDGE

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W.M. Murzyamba
SUPREME COURT JUDGE