

IN THE SUPREME COURT OF ZAMBIA

SCZ APPEAL NO. 22 OF 1993

HOLDEN AT NDOLA

(Criminal Jurisdiction)

B E T W E E N:

JONATHAN KULIWA

Appellant

And

THE PEOPLE

Respondent

Coram: Gardner, ~~Sakala~~ and Chirwa JJJ.S.

2nd March, 1993

The appellant appeared in person.

Mr. K. Lwali, Assistant Senior State Advocate appeared for the State.

J U D G M E N T

Gardner J.S. delivered the judgment of the Court.

The appellant was convicted of corrupt practice by public officer. The particulars of the offence were that he, on a date unknown but between the 21st of June, 1990 and 21st July, 1990, being a public officer, namely a chief security officer of Luapula Co-operative Union, corruptly solicited for K2,000 and received K1,000 cash gratification from Cosmas Kalwa as an inducement or reward for himself so as to facilitate the court case against Cosmas Kalwa to be thrown out and the said Cosmas Kalwa to be acquitted.

The prosecution evidence was that Cosmas ~~Kalwa~~ a marketing officer for the Luapula Province Co-operative Union was charged with theft by public officer. The appellant was the security officer responsible for the case against Kalwa. While the case was waiting for trial the appellant was alleged by Kalwa to have approached him and offered to arrange to have the case thrown out because he was familiar with the police and the magistrate who was trying the case. The appellant was alleged by PW1 Kalwa to have asked for a payment of K2,000 for the services. PW1 reported the matter to the Anti-Corruption Commission and he was given K1,000 to hand over to the

There was evidence from a witness from the Anti-Corruption Commission that after leaving the Commercial Bank the appellant and FBI had walked on opposite sides of the road and this was taken by the trial magistrate as an indication that the appellant and FBI were making conversations but to be seen together until the ritual handing over of the money. The magistrate did not believe the appellant's excuse that the money was a small token payment and held as a fact that the vehicle was used as a bribe and consequently convicted the appellant.

15/11/2000

As to the letter which had been written by PW1 to the appellant to arrange a meeting, the appellant maintained that this letter was merely a request to discuss maize which was the responsibility of PW1. Further in his grounds of appeal the appellant maintained that the prosecution of himself was an act of revenge for involving PW1 in a case of stealing vehicle tubes belonging to the Co-operative Society. The appellant also said that the prosecution against him was engineered by tribalism. The final ground of appeal was that the police officers who accompanied himself and PW1 to Lusaka had given evidence that PW1 had praised the appellant for his kind treatment in giving him food and that this had been ignored by the magistrate.

Dealing with the first ground of appeal we note that on the record there is no reference to an application at the beginning of the trial of the appellant to be represented by counsel and in the absence of evidence that the record is wrong in this respect, this ground of appeal cannot succeed. With regard to the misquotation the record of appeal as to the appellant's alleged admission of the offence, it is clear from the evidence given by the appellant in the court below that he at all times denied the offence and at no time was there a suggestion by the learned magistrate that he accepted that the appellant was admitting the offence. Further with regard to the letter that was written by PW1 to arrange a meeting with the appellant this was not used by the learned magistrate to convict the appellant, and there was no question in the magistrate's mind as to there being any intention in the matter. He accepted it as merely a letter which was arranging for a meeting between the two.

As to the conduct of the Anti-Corruption Commission officers, there was absolutely nothing wrong in their giving marked notes and arranging for the parties to meet in accordance with the original alleged arrangement for the giving and taking of the bribe. This ground of appeal cannot possibly succeed.

As to the question of revenge, the appellant was at pains

to stress the evidence that PW1 was grateful to him for his kind treatment. There was no suggestion that PW1 held the appellant personally responsible for his being prosecuted for theft by servant. The allegation relating to tribalism is not supported by any indication on the record. Neither of these arguments can succeed. As to the last ground of appeal that the police officers had heard PW1 praise the kindness of the appellant, this was not ignored by the learned magistrate who specifically referred to it in his judgment. In any event the learned magistrate accepted the evidence of PW1 that the money was given as a bribe. There was evidence that the appellant had paid between K300-K400 for everyone's food and drinks on the journey to Lusaka. A payment of K1000 therefore would be out of all proportion to the benefit that PW1 obtained from the appellants' kindness. There was evidence in any event that the appellant had received imprest money for this very cause and was not paying out of his own pocket.

We are quite satisfied in this case that the learned magistrate did not misdirect himself in any way. There was no ground on which this appeal could succeed. The appeal against conviction is dismissed. The appeal against sentence is dismissed.

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B. T. GARDNER
SUPREME COURT JUDGE

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E. L. SAKALA
SUPREME COURT JUDGE

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D. K. CHIRWA
SUPREME COURT JUDGE