



IN THE SUPREME COURT OF SWAZILAND

RULING

Criminal Appeal Case No. 30/2014

In the matter between:

THULI MKHONTA

Appellant

And

REX

Respondent

Neutral Citation: Thuli Mkhonta v Rex (30/2014) [2016] SZSC 63
(30 June 2016)

Coram: **K.M. NXUMALO AJA, J. S. MAGAGULA AJA, and**
M. LANGWENYA AJA

Heard: 19 MAY 2016

Delivered: 30 JUNE 2016

Summary: Criminal Procedure – Appellant convicted for fraud and forgery – Appellant sentenced to one year imprisonment for each of the counts – Appellant appeals against conviction – Notice of appeal states Court a quo erred in law and in fact in convicting appellant – That the Crown did not prove the case beyond reasonable doubt – Appellant did not file heads of argument – Matter was postponed from last session as record was incomplete – Record is still incomplete – Matter postponed to next session – Attempts being made to reconstruct record using judge’s notes.

RULING

M. LANGWENYA AJA

- [1] The appellant was indicted before the High Court for fraud and forgery. On the first count of fraud, it was alleged that upon or about 16 February 2012 the accused acting within the course and scope of her employment as a civil servant stationed at the Master of the High Court, Manzini she unlawfully and with intent to defraud, misrepresented to the Assistant Master of the High

Court that a request dated 16 February 2012 of E40 000.00 purported to pay school fees for a child in South African Flight Training Academy which was produced, exhibited and submitted to the said Assistant Master of the High Court to the loss and prejudice of the office of the Master of the High Court. The quotation of school fees in South African Training of Academy was misrepresented to the Assistant Master of the High Court as a genuine and authentic quotation and did by means of the said misrepresentation induce the said Assistant Master of the High Court to sign and grant the sum of E40 000.00 from Account number 040000035418.

[2] Whereas the said accused person at the time she made the aforesaid misrepresentation well knew that the said request dated 16 February 2012 was not genuine and authentic and that the said Phila had never enrolled at South African Flight Training Academy and was not entitled to the payment of E40 000.00 and thus the accused person did commit the crime of **Fraud**.

[3] On the second count of forgery and uttering the accused is said to have unlawfully defrauded the Master of the High Court by forging a prospectus purporting to be a prospectus of school fees for Phila Mamba from the South

African Flight Training Academy for the payment of E37 990.00 and thus the accused did commit the crime of **Forgery**. The accused is said to have with intent uttered the forged prospectus to the Assistant Master of the High Court.

[4] The appellant was convicted for the crime of fraud and forgery. For the count of fraud, the appellant was sentenced to two years imprisonment without the option of a fine. One year of this sentence is suspended for twelve months on condition that the accused does not during the period of suspension commit any offence of which fraud is an element. On the second count of forgery, the appellant was sentenced to one year imprisonment without the option of a fine. The sentences were ordered to run concurrently.

[5] The appellant has completed serving time and now appeals to this Court.

[6] The appellant filed a notice of appeal where she states that the trial “Court erred in law and in fact in convicting the appellant as the Crown failed to prove her guilty beyond reasonable doubt.”

[7] The appellant's grounds of appeal are that:

- a) The trial Court erred in relying on the evidence of PW 4 and PW5 and rejecting the evidence of the appellant;

- b) The Court *a quo* ought not to have relied on the evidence of PW4 and PW5 as these witnesses were not introduced as accomplice witnesses when their evidence was that of accomplice witnesses;

- c) The Court *a quo* erred in rejecting the defence of the appellant as the explanation she gave was reasonably possibly true in circumstances.

[8] The Respondent's heads of argument were that:

- a) The trial Court correctly relied on the evidence of PW4 and PW5 as these witnesses corroborated each other;

- b) The defence advanced by the appellant was not reasonably possibly true.

[9] The matter was enrolled in the Supreme Court session in November 2015 and was postponed to this session. The reason for the postponement is that the record was incomplete. The matter was then removed from the roll pending reconstruction of the court record.

[10] Counsel for the appellant and Counsel for the Respondent informed the Court that the record was still incomplete; that efforts are still being made to get hold of the judge's notes to complete the process. In the circumstances, the matter was removed from the roll pending finalization of the reconstruction of the court record process.

M. LANGWENYA AJA

I agree _____

K.M. NXUMALO AJA

I agree _____

J.S. MAGAGULA AJA

For Appellant:

Mr L. Gama

For Respondent:

Mr B. Magagula