

LARDEN BECK NKALA

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 7 DECEMBER 2012

R Ndlovu for Applicant
L. Maunze for Respondent

COURT APPLICATION FOR REVIEW

KAMOCHA J: The following order was granted by consent after hearing both legal practitioners.

It is ordered that:-

- 1) The decision of the magistrate court, sitting at Western Commonage, Bulawayo, on the 15th October 2012 under case number CRB WC 548-50/12 wherein the court dismissed the application for discharge at the close of the state case be and is hereby set aside.
- 2) The applicant's application for a discharge at the close of the state case be and is hereby upheld and the applicant is found not guilty and acquitted.
- 3) There shall be no order for costs of suit.

The brief facts that are germane to this case were that the applicant and two others were charged with fraud as defined in section 136 of the Criminal Law (Codification and Reform) Act [Chapter 9:23]. He pleaded not guilty whereupon the State led evidence from one witness one Joseph Virima a Loss Control Officer at the Grain Marketing Board. After his testimony the state case was closed.

Applicant's counsel applied for a discharge of the applicant at the close of the State case but the application was dismissed. The State counsel has conceded that the evidence of the loss control officer at Grain Marketing Board fell far short of proving the key essential elements to the crime of fraud. It did not establish that there was any misrepresentation in this matter and neither did his evidence establish that prejudice actual or potential occurred.

Quite clearly the State had failed to establish a *prima facie* case against the applicant at the close of the State case and the trial court ought to have discharged the applicant at that point. Instead, the court decided to improperly place him on his defence in an attempt to bolster and buttress an awfully weak State case. See *SvKachipare* 1998(2) ZLR271 (S).

In the result, the concession by counsel for the State was, in my view, properly made.
The applicant was entitled the order sought as reflected on page 1 above.

Ndou J agrees

R. Ndlovu and Company applicant's legal practitioners
Attorney General's Office respondent's legal practitioners