

XOLANI ZOLOLO

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
NDOU AND KAMOCHA JJ
BULAWAYO 26 AND 29 SEPTEMBER 2011

R. Mahachi for appellant

T. Hove for respondent

Criminal Appeal

KAMOCHA J: The 30 years old appellant was charged with theft of gold weighing 589-90 grammes which was alleged to have been committed on 5 January 2006 at Fidelity Printers and Refiners, Gwanda. He pleaded not guilty but was nevertheless convicted at the end of the trial.

He was then sentenced to undergo 24 months imprisonment of which 12 months imprisonment was suspended on condition accused paid restitution in the sum of \$880 700 Zimbabwe dollars to the complainant through the clerk of court - Gwanda on or before 30 January 2007.

Aggrieved by the decision of the court, he appealed to this court against both conviction and sentence.

Counsel representing the State did not support the conviction of the appellant and detailed the reasons for so doing. For instance, he pointed out that the case against the appellant was not proved beyond any reasonable doubt. The alleged swap of the complainant's gold bullion was purely conjecture and speculation. It was very doubtful that the appellant had dummy gold bullion or had the capacity to make one which he would have swapped with the complainant's gold. It was further highly doubtful that the pieces of gold brought for sale at some other stage had been chipped off from the gold cone he had deposited with the appellant.

For these and other reasons detailed in counsel's heads of argument, the State was unable to support the conviction of the appellant. In my view, the concession was properly made.

In the result, the appeal succeeds and the conviction and sentence are hereby set aside.

NDOU J I agree

Messrs T. Hara & Partners appellant's legal practitioners

Criminal Division of the Attorney General's Office respondent's legal practitioners