

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

APPEAL JUDGMENT

Case no: CA 106/2017

SAARA IDHINI

APPELLANT

Versus

THE STATE

RESPONDENT

Neutral citation: *Idhini v The State* (CA 106/2015) [2017] NAHCMD 117 (21 April 2017)

Coram: NDAUENDAPO J et SHIVUTE J

Heard: 27 January 2017

Delivered: 21 April 2017

ORDER

The appeal against the conviction is dismissed.

APPEAL JUDGMENT

SHIVUTE, J (NDAUENDAPO J CONCURRING)

[1] The Appellant was convicted of corruptly accepting gratification by an agent as an inducement. The Appellant being a police officer, wrongfully, unlawfully, directly or indirectly and corruptly solicited or indirectly agreed to accept for her own benefit from Mara Helm a gratification to wit Five Hundred Namibia Dollars (N\$500) as an inducement to omit issuing a traffic ticket in contravention of s 33 (1) (a) as read with ss 32, 46, 49 and 51 of the Anti-Corruption Act 8 of 2003. She was sentenced to Five Thousand Namibia Dollars (N\$5000) fine or in default of payment, one (1) year' imprisonment. She is not satisfied with the conviction, hence this appeal.

[2] On 17 October 2009, the Appellant was on duty manning a roadblock between Windhoek and Rehoboth. Whilst on duty, she encountered a Ms Helm who was travelling with her husband's parents at around 11h00. The Appellant informed Ms Helm's in-laws that they owed her money in the amount of Three Hundred Namibia Dollars (N\$300). According to Ms Helm, the Appellant explained to her that the money was due to her because Ms Helm's mother-in-law did not buckle up when they initially passed through the road block on a different date in the absence of Ms Helm.

[3] Ms Helm's in-laws do not reside in Namibia. They came from South Africa for a visit. Ms Helm told the Appellant that they did not have money at that stage and that they would pay her upon return from Rehoboth. Ms Helm gave her cellphone number to the Appellant. The Appellant and the witness also agreed that they should come back from Rehoboth around 22h00 because that would be the time the Appellant

would resume her duty again. However, Ms Helm and her in-laws returned from Rehoboth earlier around 20h00. By then the Appellant did not start her shift.

[4] The following day, the 18th October 2009, the Appellant phoned Ms Helm asking for the money. When the Appellant demanded the money, she increased the amount to Five Hundred Namibia Dollars (N\$500) because Ms Helm allegedly lied to her as she did not give her the Three Hundred Namibia Dollars (N\$300) the previous day. Ms Helm made contact with the police and informed them about the Appellant's demands. The police decided to lay a trap against the Appellant and gave Ms Helm marked money in the amount of Five Hundred Namibia Dollars (N\$500), namely three One Hundred Namibia Dollar notes and a note of Two Hundred Rand (R200). Ms Helm took the money as stated above to the Appellant at the same roadblock whilst the Appellant was on duty with another female police officer. Meanwhile, the police officers who were involved in the operation were looking on. After Ms Helm left, the police who were observing came to the roadblock and asked the Appellant with her companion to give them the money they had just received from Ms Helm. According to police officer Shakundu, both denied to have received the money. Police officer Shakundu searched the Appellant and found the money as stated above, stacked in the Appellant's socks after she was ordered to take off her police boots.

[5] However, the Appellant contended that the money that she was given by Ms Helm was due to her because it was a refund from Ms Helm's in-laws, as she gave them the money on 15 October 2009 when they initially passed through the roadblock in order for them to buy her cleaning materials when they go back to Cape Town. The Appellant was involved in buying and selling of cleaning goods. However, as soon as Mr and Mrs Helm left, she realised that she made a mistake to have given her money to complete strangers and when she met them again at the same roadblock in the company of Ms Helm, she demanded for the money to be refunded to her.

[6] The Appellant in her grounds of appeal, contended that the Court a quo misdirected itself in convicting her without Ms Helm's in-laws being called to testify. She argued that she was convicted because she gave her money to strangers to buy her goods. She argued that she gave the money to the travelers because she could not find the people she would normally send.

[7] In convicting the Appellant, the Court a quo rested on the evidence of Ms Helm, who is a single witness and circumstantial evidence. Although Ms Helm was a single witness, counsel for the Respondent correctly argued that it is a well-established principle that, where a witness gives evidence as a single witness, that such evidence must be corroborated or approached with caution, although such caution should not be allowed to displace the exercise of common sense (*S v Snyman* 1968 (2) SA; *S v Sauls and Others* 1981 (3) SA 172 (A)) and must be clear and satisfactory in every material respect (*R v Mokoena* 1932 OPD 79; *S v Artman and Others* 1968 (3) SA 339 (A)). Evidence of the single witness needs not be satisfactory in every respect as it may safely be relied upon even where it has some imperfections, provided that the court can find at the end of the day that even though there are some shortcomings on the evidence of the single witness, that the truth has been told. (*S v HN* 2010 (2) NR 429 (HC))

[8] The court must assess the evidence as a whole. The Court a quo, having had regard to the evidence as a whole, rested its verdict on the evidence of Ms Helm. Although the in-laws of Ms Helm were not called, Ms Helm testified that the Appellant told her that her in-laws owed her money because her mother in-law did not have a seat belt on. If it is true that the Appellant gave money to the first State witness' in-laws, why was it not put to the witness through cross-examination? It is unfair for the defence to fail to put its version to the State witness so that the witness would have the opportunity to answer to the questions. Again, if it is true that the money was given to the Appellant as a refund, why would the Appellant, when asked to give the money she had just received, deny that she had no money and why would the money be concealed in her socks?

[9] The learned magistrate rightly found Ms Helm to be a credible witness and accepted her story and rejected the Appellant's version, despite some imperfections in Ms Helm's version. The court was satisfied that the truth has been told. It is highly improbable that the Appellant being a police officer for eight years at the time, would give money to complete strangers from a foreign country whom she met for the first time at the roadblock to go and buy her cleaning materials. It is even more strange that she did not even take their contact details. The Appellant's version is far-fetched

and it could not be reasonably possibly true. The probabilities favour Ms Helm's version that the money was demanded as a bribe for not being sanctioned for failing to wear a seat belt. Therefore, the Appellant, by demanding and receiving the money, amounted to corruptly soliciting a bribe as an inducement for the Appellant being an agent of the police to omit to execute her duty. The offence was completed at the time she received the money from Ms Helm.

[10] There are no misdirections on the part of the learned magistrate as she correctly rested her conviction on direct as well as circumstantial evidence. It follows that there is no need for this court to interfere with the decision of the learned magistrate. The State had proved its case beyond a reasonable doubt and the Appellant's appeal is bound to be dismissed.

[11] In the result, the appeal against the conviction is dismissed.

N N SHIVUTE
Judge

G N NDAUENDAPO
Judge

APPEARANCES:

THE APPELLANT: Ms Saara Idhini (In Person)

THE RESPONDENT: Mr Nduna
Of Office of the Prosecutor General