

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**



(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED

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Case number: A268/2015

In the matter between:

MHLANGA, GUGULETHU MAINESS

Appellant

And

THE STATE

Respondent

JUDGMENT

SATCHWELL J:

INTRODUCTION

1. Ms Gugulethu Mhlanga appeals her conviction and sentence in the Magistrate's Court at Kempton Park on charges of contravening Act 140 of 1992 by dealing in 1495.139 grams of cocaine. She was, surprisingly sentenced to a most lenient

sentence of 12 years imprisonment of which 3 years was suspended on condition that she does again commit the same offence.

2. On 26th July 2011 a plane arrived from Sao Paolo in Brazil at OR Tambo International Airport. The appellant had been a passenger on this plane and was apprehended.
3. At issue is the ownership of a suitcase in which was found a substantial amount of cocaine. The prosecution led evidence to prove that the suitcase belonged to the appellant whilst she denied that it was.
4. Sergeant Tsiri observed the appellant. When asked she told him she did not have a boarding pass or a passport nor had she checked any luggage. He did not believe her, found a suitcase on the carousel, obtained keys from the appellant and unlocked the bag. Within the bag the Sergeant found a false compartment and there in was a parcel covered in a layer of brown sellotape. The contents of the parcel were a white substance and it is common cause that this is cocaine. Sergeant Tsiri arranged for photographs to be taken and booked the cocaine into the exhibits room and it was later taken to Forensics for analysis.
5. The only additional evidence which really concerns the appellant is that she informed Sergeant Tsiri that one "CJ" a "Nigerian national" was involved.
6. The appellant gave evidence. Her story verged on the ridiculous:
 - a. Firstly, she claims to work as a hairdresser at an unknown salon where she does no more than rent a chair. Her earnings and income are derisory. Yet she also claims to have sufficient funds to enable her to travel on a return ticket to both Brazil for a full week and previously India to purchase hair for her business.
 - b. Secondly, her ability to negotiate for the purchase of hair in a foreign language, her lack of knowledge of the cost of such hair suggests that this is not a business in which she really engages or has any knowledge. IN fact, she conceded she did not know the prices charged for Brazilian hair nor the shop from which she purchased this hair.
 - c. Thirdly, she was never able to produce any of the hair which she had travelled so far to obtain.
 - d. Fourth, when the appellant was confronted with her own bail application containing reference to 'CJ' and 'Mary Vilakazi' and Nigerians and stating that Portuguese men had taken away her own suitcase whilst in Brazil, she simply disclaimed any knowledge of the contents of her affidavit, prepared by her own attorney and signed by herself.

- e. Fifth, the appellant claimed that she left the aeroplane carrying no more than a handbag and a small carry on case which contained the hairpieces. She made no mention of any changes of clothing during her time in Brazil. She denied any knowledge of the suitcase found on the carousel. She denied that she had produced the key to open it. Yet she conceded that the suitcase contained clothes and shoes for a woman and was unable to suggest what underwear or toothbrush or clothes she would have been using in Brazil. She could make no comment on the name, ticket number or date on the bag tag relevant to this suitcase.
 - f. Sixth, the appellant disputed that she produced the key to open the suitcase containing the cocaine. She said that she was not present when the suitcase was opened, she saw that it had been cut open and did not know where the SAPS obtained the plastic parcel of cocaine.
7. I can find no misdirection in the judgment of the learned magistrate as to his assessment of all the evidence. He was particularly careful in evaluating the evidence of Sergeant Tsiri and taking into account that he was a single witness.
8. This appellant was found guilty of dealing in excess of 1485 grams of cocaine and the previous appeal I have just read the appellant was found guilty of dealing in 953 grams of cocaine. Both were passengers on planes from Sao Paolo. Yet Mhlanga was apparently treated with far greater leniency because she is the mother of two children (one aged 18 and the other 16) which means that one child is a major person. The learned magistrate in this case expressed great concern about the potential breakdown of family life and it appears that this was the only reason for suspending no less than one quarter of the sentence imposed upon her.
9. I would recommend that the Regional Magistrate at Kempton Park perhaps have a look at sentencing patterns in such matters. Of course sentence is always a matter for the discretion of the presiding judicial officer, but justice requires persons and crimes to be treated with some degree of consistency otherwise sentences ceased to be just and become arbitrary and based on personal predilections and concerns.
10. In the circumstances I can see no reason for interfering with the decisions on conviction or sentence of the learned magistrate and would confirm both.
11. An order is made as follows: The appeal against conviction and sentence is dismissed.

DATED AT JOHANNESBURG 14 MARCH 2016

SATCHWELL J

I agree.

MOKOENA AJ

Counsel for Appellant: Adv JL Kgokane
Attorneys for Appellant: Legal Aid of SA
Counsel for Respondent: Adv N Kowlas
Attorneys for Respondent: Office of DPP
Dates of hearing: 14th March 2016.
Date of judgment: 14th March 2016.