

A 1145/09

IN THE HIGH COURT OF SOUTH AFRICA

(TRANVAAL PROVINCIAL DIVISION)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	☒
(2) OF INTEREST TO OTHER JUDGES: YES/NO	☒
(3) REVISED.	
18/12/2009	
DATE	SIGNATURE

DATE: 18/12/2009

5/1/2010

Magistrate Case No: 3214/07

High Court Ref No: 1283

THE STATE v FRANS SEKODIMOTO MASHA

REVIEW JUDGMENT

DU PLESSIS, J:

This is an automatic review case. The magistrates' court in Middelburg convicted the accused of theft and sentenced him to three years imprisonment. The matter initially came before my brother Bertelsmann J who, by way of a query to the learned magistrate, raised certain concerns about the conviction. On receipt of the magistrate's comments, the matter was referred to the Director of Public Prosecutions. Mr Baloyi and Mr Roberts of that office prepared a

helpful memorandum. On a number of grounds they do not support the conviction.

The charge against the accused was that he had stolen 58kg of stainless steel, worth R168,00, from a business called Columbus Stainless Steel (Columbus). For the state Mr J C Nkomo testified that he is a gate supervisor at Columbus. At about 19h40 on 23 October 2007 while patrolling, he heard a noise and saw someone inside Columbus's premises. He called for assistance. When another security officer arrived, they investigated and found the accused hiding in the grass on the premises. When the accused saw them, he tried to run away, but was apprehended. The accused had nothing in his possession but on further investigation the security officers found a bag lying in the vicinity where they had first seen the accused. There were also pieces of stainless steel lying around there. When asked for an explanation, the accused told Nkomo that he "did not know that he was not supposed to take the" stainless steel. The accused also said the he thought that ... this items ... were dumped there or being thrown away". Nkomo later said that the relevant pieces of stainless steel were off-cuts destined for recycling. The evidence shows that these off-cuts were not stacked but were lying around on the ground where the accused was found.

Mr AK Malope testified for the state that he responded to Mr Nkomo's call for assistance. He confirmed the evidence that they found the accused hiding in

the grass; that he ran away and was caught. Mr Malope also confirmed that they later found a bag containing pieces of stainless steel in the vicinity where they had first seen the accused. Mr Malope described the pieces as "steel scrap metals that Columbus uses to recycle". According to Mr Malope the accused did not say anything when he was apprehended.

The evidence of the two state witnesses shows that, in order to gain access to the premises, the accused must have defied several security arrangements and that he probably entered through a hole in the fence.

The accused testified that he had gone to Columbus's premises at about 18h00 to look for work. He confirmed that he was arrested at about 19h40 but said that he was outside the premises at the time. He denied that he had hidden in the grass and ran away when the security officers arrived.

The learned magistrate, in my view, rightly rejected the evidence of the accused as false beyond doubt. The state's evidence proves beyond reasonable doubt that the accused had unlawfully gained access to the premises and, when the security officers came, hid in the grass and then tried to run away. I am in respectful agreement with the learned magistrate that the only reasonable inference from all the evidence is that the accused was on the premises to gather stainless steel and that he was in the process of putting the steel in a bag in

order permanently to remove it from the premises. I also agree that the state has proved that the stainless steel was the property of Columbus.

Despite the above, I agree with Messrs Baloyi and Roberts that the conviction is not in accordance with justice. The evidence shows that the stainless steel in question were off-cuts or scrap lying around on the premises. It must be accepted that Columbus had not abandoned its propriety rights in the steel as the intention was to recycle it. It is reasonably possible, however, that the accused did not realise that: He told Nkomo that he thought the steel had been thrown away and that he could take it. On that basis the accused was not proved to have had the subjective intention to steal, he lacked "wederregtelikhedsbewussyn". Against such a possibility the accused actions on the night in question and his false evidence in court must be weighed. As for his hiding and running away, it must be borne in mind that he was on the premises unlawfully and that fact could reasonably account for his conduct. As for his false evidence, it cannot be said beyond reasonable doubt that he lied in court because his initial explanation to Nkomo was false.

It is concluded that the state did not prove the guilt of the accused beyond reasonable doubt. In arriving at that conclusion, I am mindful thereof that the state is not called upon to disprove every possible defence an accused person might have. In this case, however, the evidence for the state raised doubt as to

The following order is made:

1. The conviction and sentence¹⁵ ~~it~~ set aside.
2. To the extent that the accused is in prison in respect of the conviction in this case, his immediate release is ordered.



B.R. du Plessis

Judge of the High Court

I agree,



C. Botha

Judge of the High Court

IN THE ORDINARY COURSE OF EVENTS.