



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Appeal number: A54/2016

In the matter between:

KERILENG JACOB MATHIGA
MOSALA SOLOMON MATHIGA
VUSUMI SOLOMON NKOMANDA

1st Appellant
2nd Appellant
3rd Appellant

and

THE STATE

Respondent

CORAM: MBHELE, J *et* ZIETSMAN, AJ

HEARD ON: 20 JUNE 2016

JUDGMENT BY: MBHELE, J

DELIVERED ON: 23 JUNE 2016

[1] This is an appeal against sentence. The appellants were convicted of housebreaking with intent to steal and theft by a

regional court sitting at Viljoenskroon on 21 June 2015 and were sentenced as follows on the same day, first appellant was sentenced to six years imprisonment while 2nd and 3rd appellants were each sentenced to 5 years imprisonment. Leave to appeal against sentence was granted on petition by this court.

- [2] The grounds upon which the appellants are challenging their sentence are briefly that the regional magistrate erred by overemphasising the aggravating factors and the interests of the society and disregarding the appellants' personal circumstances. It is further submitted that he erred when he found that the damage caused by the offence the appellants are convicted on runs into millions of rands without evidence being led to support such a statement.
- [3] The facts that led to the appellants' conviction were that on 11 July 2014 at Viljoenskroon the appellants broke into a container belonging to Vodacom and stole 16 batteries owned by Vodacom and 8 batteries owned by MTN. The batteries are used to sustain network connectivity.
- [4] We are called upon to determine whether the trial court improperly or unreasonably exercised its judicial discretion.
- [5] Mr. Makhene, on behalf of the appellants, stood by the heads as filed and implored us to answer the above question in the affirmative.

- [6] Mr. Chalale, on behalf of the respondent, submitted that the question must be answered in the negative, counsel urged us to dismiss the appeal and confirm the sentences.
- [7] We have to take into account the appellants' personal circumstances.
- [8] First appellant was 36 years of age at the time of sentencing, married with four minor children, for the purposes of sentence he was regarded as a first offender, he was gainfully employed and earned R 150 per day. He was the sole breadwinner for his family.
- [9] Second appellant was 34 years old and divorced, he has one minor child who was 14 years of age, he worked at a bar and earned R50 per day. He is a first offender.
- [10] 3rd Appellant was 33 years old and married. He has two minor children who were 3 years and 2 years of age respectively. He was self employed and earned R4000 per month. He went to school up to grade 11.
- [11] Sentencing is pre- eminently in the discretion of a trial court. The sentence can only be interfered with if the sentencing court exercised its discretion unreasonably or in circumstances where the sentence is vitiated with irregularity, misdirection or where there is a striking disparity between the sentence and that which the appeal court would have imposed had it been the trial court.

(See **S v Rabie** 1975 (4) SA 855 (A); **S v Pieters** 1987 (3) SA 717 (A) at 727).

- [12] The type of housebreaking and theft that the appellants have been found guilty of has far reaching economic and social consequences. The theft of batteries at telecommunications networks towers extend far beyond the physical damage on the cellular tower. The operators have to bear repair costs, employment of security, loss of income and deal with a flurry of customer complaints.
- [14] Consumers have to battle with network unavailability, and inability to access emergency services. Businesses relying on the affected networks are affected as well. This type of offence leaves a huge dent on the economy and ordinary people's social lives.
- [14] The trial court, in my view, took all the relevant factors into consideration when sentencing the appellants.
- [15] When weighing up the mitigating factors against the aggravating circumstances of this matter as well as the interest of community, I am not persuaded that the sentence imposed is unjust. I am of the view that the trial court exercised its discretion judiciously. There is no basis for us to interfere with the sentences.

ORDER

- [16] I make the following order:

The appeal fails and sentences are confirmed.

N.M. MBHELE, J

I concur

ZIETSMAN, AJ

On behalf of applicant: Adv. Makhene
Instructed by:
Bloemfontein Justice Centre
BLOEMFONTEIN

On behalf of respondent: Adv. Chalale
Instructed by:
Office of the Director: Public Prosecutions
BLOEMFONTEIN