



IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG
JUDGMENT

NOT REPORTABLE
CASE NO: AR626/2015

In the matter between:

MALUSI GOODWILL NDLOVU

APPELLANT

And

THE STATE

RESPONDENT

Coram : Moodley et Seegobin JJ

Heard : 28 June 2016

Delivered : 5 July 2016

ORDER

On appeal from the Magistrate's Court, Vryheid (sitting as a court of first instance):

The appeal succeeds and the conviction and sentence are set aside.

JUDGMENT

SEEGOBIN J (et Moodley J concurring):

[1] The appellant was convicted in the Magistrate's Court, Vryheid, on one count of negligent driving in contravention of the relevant provisions of the National Road Traffic Act 93 of 1996. He was sentenced to pay a fine of R2500,00 and in default thereof to undergo six months imprisonment. The present appeal against conviction and sentence is with leave of the court *a quo*.

[2] The appellant who was legally represented pleaded not guilty to the charge. From the outset his defence was that at the relevant time he was disturbed by a swarm of bees while driving his vehicle.

[3] The incident in question was alleged to have occurred on 9 September 2014 in the parking lot of the Checkers Supermarket at Vryheid. The State case rested on the evidence of three witnesses, two of them viz *Xulu* and *Mhlongo* are police officers who were seated in a police motor vehicle when it was struck by the appellant's motor vehicle. The third witness, viz *Radebe* was the owner of the other motor vehicle which was struck by the appellant's motor vehicle. It was common cause that *Radebe* did not witness the collision at all.

[4] The evidence showed that while the appellant was attempting to park his motor vehicle, the vehicle suddenly moved beyond the confines of the chosen parking bay and collided with front parts of both the police vehicle and that belonging to *Radebe*. Both *Xulu* and *Mhlongo* who were looking at the appellant's motor vehicle as the appellant was trying to park it, were unable to

point to anything untoward in the manner in which the appellant was driving at the time. Accordingly, it was not really apparent on the State case why the collision would have occurred in the first place.

[5] The appellant's version was that just at the time when he was attempting to maneuver his vehicle into the parking bay, he was disturbed by a swarm of bees. This caused him to lose control of his motor vehicle when his foot slipped off the brake onto the accelerator. The appellant testified that he was driving with his windows open at the time. He also testified that he was stung once in the vicinity of his neck and ear. His further evidence was that the swarm had entered his motor vehicle from the left windows. He tried to ward off the bees with both hands and in the process lost control of his motor vehicle.

[6] Although the witness Radebe did not witness the collision, he did, however, confirm that during the relevant period there was a swarm of bees that caused havoc in the area by stinging people.

[7] In convicting the appellant the learned magistrate simply rejected his evidence without considering whether it was reasonably possibly true. He went further and found that there were no bees at the time despite the undisputed evidence of Radebe that there was bee activity in the area at the time. This lent some credence to the appellant's version which could not be ignored. The learned magistrate appears to have based his reasoning on the matter of *S v Erwin* 1974(3) SA 438(c). However, the distinguishing feature for me is that in the *Erwin* matter the driver was faced with 'a single' bee entering the motor vehicle. In the present matter it was a swarm of bees which posed a huge threat to the appellant and interfered with the appellant's driving. In my view, the appellant was clearly faced with a sudden emergency which caused him to lose

control of the vehicle. His version was, in my view, reasonably possibly true and no blame can thus be attributed to him for what transpired at the time.

[8] Mr Du Preez who appeared for the State has quite properly and correctly, in my view, submitted that there was no evidence to rebut the appellant's version of what transpired at the relevant time. It follows that the conviction is wrong and must be set aside.

[9] The order I propose is the following:

The appeal succeeds and the conviction and sentence are set aside.

 I agree

MOODLEY J

Date of Hearing	:	28 June 2016
Date of Judgment	:	5 July 2016
Counsel for Appellant	:	GL Leppan
Instructed by	:	Justice Centre
Counsel for Respondent	:	R Du Preez
Instructed by	:	Director Public Prosecutor, Pietermaritzburg