

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Appeal No. : A237/2010

In the matter between:-

PETRUS BUTI NXOKO

Appellant

and

THE STATE

Respondent

CORAM: JORDAAN, J *et* CHESIWE, AJ

HEARD ON: 27 FEBRUARY 2012

JUDGMENT BY: CHESIWE, AJ

DELIVERED: 8 MARCH 2012

[1] The appellant was charged in the Parys District Court with theft.

The appellant pleaded not guilty and was convicted and sentenced to a fine of R1 000,00 or five months imprisonment, suspended for five years on condition that he is not found guilty of theft. The appeal lies against the conviction and sentence.

[2] The main ground of appeal is that the State did not prove its case beyond reasonable doubt.

[3] The facts of the case are that the appellant was employed by Parys Sekuriteit and on 30 October 2008 was arrested for theft of the following items:

- control panel
- switch board
- alarm system/set

[4] Advocate Reyneke, on behalf of the appellant, in the heads of argument emphasised that the State in the court *a quo* did not prove the case against appellant beyond reasonable doubt. In this regard reference was made to the case of **S v V** 2000 (1) SASV 453 (SCA) at 455 a – c:

“It is trite that there is no obligation upon an accused person, where the State bears the *onus*, 'to convince the court'.”

If his version is reasonable possible true, he is entitled to acquittal even though his explanation is improbable. A court is not entitled to convict unless it is satisfied, not only that the explanation is improbable, but beyond any reasonable doubt it is false. It is permissible to look at the probabilities of the case to determine whether the accused's version is reasonably

possibly true, but whether one subjectingly believes him is not the test.

- [5] This is highlighted further in the presiding officer's judgment, page 890 of the records:

"Van die maatstawwe vir evaluering van getuienis is daar demonstreerbaar, leuenagtigheid, valsheid aan te merk, weersprekings, afwykings. ... Die hof moet nou hier 'n geloofwaardigheid bevinding maak. Wie gaan die hof nou glo?"

- [6] This issue is further canvassed by the court *a quo* that:

"Mnr [Barend Daniel] Oosthuizen (state witness) hy is uitgevang dat hy steel by die werk. En toe hy daarvoor gekonfronteer is, het hy erken dat hy in Welkom gesteel het, maar om een of ander rede het hy maar besluit hy wil die beskuldigde saamsleep om sodoende sy situasie te versag."

- [7] Advocate Hoffman on behalf of the respondent, in the heads of argument and oral submission, indicated that there was no true evidence that the appellant did steal the mentioned items. He

stated that the employer was aware that the appellant had the items with him albeit opted to observe the appellant.

[8] Advocate Hoffman submitted that the employer heard from other people that the appellant had these items and that the workshop of the employer had no proper control over items going in and out. Advocate Hoffman conceded that the conviction and sentence against the appellant should be set aside.

[9] The appellant denied that the items were found on him and that the items were in the car for two days and not two weeks. The appellant also denied that he has shared any money with Barend Daniel Jacobus Oosthuizen.

[10] In terms of our law the State must prove beyond reasonable doubt that the appellant's conduct has met all the requirements of theft. Thus the onus rests on the State to prove beyond all reasonable doubt that the appellant had the required criminal capacity.

I am of the view that in this case the State did not prove its case

beyond reasonable doubt.

[11] Accordingly I make the following order:

The appeal in respect of both the conviction and sentence succeed.

The conviction and sentence imposed by the trial court is set aside.

S. CHESIWE, AJ

I concur.

A.F JORDAAN, J

On behalf of appellant:

Mr. J.D. Reyneke
Instructed by:
Bloemfontein Justice Centre
BLOEMFONTEIN

On behalf of respondent:

Adv. R. Hoffman
Instructed by:
Office of the Director:
Public Prosecutions
BLOEMFONTEIN

/sp