

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Appeal No. : A98/2009

In the appeal between:

MATTHEWS MOTHUSI GODLA

Appellant

and

THE STATE

Respondent

CORAM:

MOCUMIE, J *et* KUBUSHI, AJ

JUDGMENT BY:

MOCUMIE, J

DELIVERED ON:

3 MARCH 2011

APPEAL: JUDGMENT

MOCUMIE, J

[1] The Regional Court, Koffiefontein convicted the appellant on two counts of theft on 28 January 2009. The first was a count of theft of a motor vehicle to wit an Isuzu truck and the second of theft of copper cable. On the same day he was sentenced to six (6) years imprisonment. Both counts were taken as one for purposes of sentence. He now appeals against the conviction in

both counts with leave of the court *a quo* which was granted on 24 April 2009.

[2] The evidence adduced at the trial established that on 10 April 2008 at 22h00 the complainant, Mr Nicolas Bason (“Bason”), left the keys of his Isuzu truck in the ignition hole and went to sleep. The truck was parked next to the store room on his premises. In the morning of 11 April 2008 the truck was missing. Upon further investigation he discovered that the copper cable which was in the store room was also missing. He reported the theft to the police.

[3] Further evidence established that Bason then followed the tracks of the truck to a neighbouring farm. He went into a store room of the farm concerned and saw three people cleaning copper cable. When they saw him the three stood up and fled. He chased after one of them, caught him and brought him back to the store room. That person was the appellant. The police arrived at the scene and the appellant was arrested.

[4] There was no direct evidence linking the appellant to the

commission of the offences. According to the judgment, the trial court convicted the appellant on the basis of the following circumstantial evidence:

- 4.1 The appellant fled from the store room of the neighbouring farm where three people were found in possession of copper cable stolen from the complainant's premises;
- 4.2 The appellant was one of the three people that fled; and
- 4.3 The complainant's truck was found 15 metres away from the farm concerned.

[5] In his evidence during the trial appellant denied that he was ever part of the group that stole the truck and the copper cable. According to him he was on the farm concerned on invitation of one Bishop who is a co-owner of that farm. He was arrested by the complainant doing nothing wrong except waiting for Bishop to come back. The trial court however rejected his version as false and furnished reasons for its conclusion.

[6] Advocate Smith conceded that in so far as count 2 is concerned the appellant's version is not reasonably possibly true. However

in respect of count 1 she contended that the conclusion the trial court drew was not the only conclusion that could be drawn from the circumstances. She submitted that there was no *allunde* evidence that supported the conclusion that the appellant was the person that stole the truck or was with the person(s) who stole the truck at the time it was stolen.

[7] She argued that the truck could have been stolen by Bishop, who was well known to the police, whom the appellant said had brought him to the farm.

[8] The correct approach to circumstantial evidence has been stated in numerous cases by the Appellate Division. In the seminal decision of **R v BLOM** 1939 AD 188 at 202 – 203 the Court stated as follows:

“(1) The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.

(2) The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn.

If they do not exclude other reasonable inferences, then there must

be a doubt whether the inference sought to be drawn is correct.”

[9] In principle the court which has to deal with circumstantial evidence must not only look at the evidence of the State or of the accused in isolation but it must consider the cumulative effect of the circumstantial evidence in the case. See **NXUMALO v S** [2009] JOL 24273 (SCA).

[10] In this case the fact that the complainant's truck and copper cable were stolen between 10 and 11 April 2008 from his farm; that the copper cable was discovered on 11 April 2008 at a neighbouring farm; that the appellant was found on the premises of the neighbouring farm on 11 April 2011; and that the appellant ran away together with the two people that the complainant found cleaning copper cable inside the store room of the neighbouring farm ; that the complainant's truck was found 15 metres away from this neighbouring farm did not conclusively point to the appellant's guilt beyond reasonable doubt in respect of the theft of the truck. As correctly submitted by Advocate Smith there is a possibility that any other person including Bishop or those that fled or others not found at the

scene could have stolen the truck and abandoned it for unknown reasons. Mr Chalale, for the respondent, was constrained to concede that the conclusion drawn by the trial court was indeed not the only reasonable conclusion that could be drawn from the prevailing circumstances.

[11] I am satisfied that the trial court misdirected itself in so far as count 1 is concerned and that the appeal on it ought to succeed.

[12] Lastly although the trial court imposed six years imprisonment cumulatively in respect of both counts I am of the view that because of the large quantity of the copper cable stolen and the seriousness of the offence in count 2, six years imprisonment is sufficient.

[13] In the circumstances I make the following order:

ORDER:

- 1. The appeal on the first count is upheld.**
- 2. The appeal on the second count is dismissed and the conviction is confirmed.**

3. The sentence as a whole in respect of both counts is set aside and substituted by the following:

“Count 2: The accused is sentenced to 6(six) years imprisonment.”

I concur.

B. C. MOCUMIE, J

E. M. KUBUSHI, AJ

On behalf of the appellant:

Adv. R.J. Nkhahle
Instructed by:
Bloemfontein Justice Centre
BLOEMFONTEIN

On behalf of the respondent:

Adv. S. Chalale
Instructed by:
Director of Public Prosecutions
BLOEMFONTEIN

BCM/sp