

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : A176/2010

In the matter between:-

MANUEL THOBELA

Appellant

and

THE STATE

Respondent

CORAM:

H M MUSI, JP *et* MOLOI, J

JUDGMENT BY:

MUSI, JP

HEARD ON:

31 OCTOBER 2011

DELIVERED ON:

10 NOVEMBER 2011

[1] The appellant was arraigned on two charges in the magistrate's court for the district of Sasolburg. The first is housebreaking with intent to steal and theft, it being alleged that on the 11th to 12th July 2008 and at 6 Oliewenhout Street, Sasolburg, the appellant broke into the house of Miss Lebohang Daphney Makau (Makau) and there stole a variety of articles set out in the annexure to the charge sheet. In the second count, it was alleged that on the 12th July 2008 at night, the appellant entered the premises of

Fakkel School in Sasolburg without the permission of its lawful occupier or caretaker and was thus guilty of trespass. The appellant was convicted on all the counts, which were then taken together for purposes of sentence and he was sentenced to six years imprisonment.

[2] It is undisputed that between 11 and 12 July 2008 the house of Makau was broken into and her property comprising movables valued at R36 914,00 were stolen. The stolen goods were found in the night of the 12th July 2008 on the premises of Fakkel School, Sasolburg. They were packed in two suitcases. It is undisputed that the appellant was apprehended at Fakkel School on the same night of 12 July 2008.

[3] The dispute in this matter centres on the following issues:

- 3.1 whether the appellant was found inside the premises of the school under circumstances described by the state witnesses.
- 3.2 whether the suitcases containing the stolen goods were found in the immediate vicinity of the appellant when he was first seen and, if so, whether it can be

inferred that he was in possession thereof.

- 3.3 whether the inference that the appellant had been in possession of the stolen goods is the only reasonable inference to be drawn in the circumstances.

(**R v BLOM** 1939 AD 188 at 202 – 203.)

- [4] The first point to be made is that the magistrate accepted the version of the state as true and rejected that of the appellant as false and the question is whether there is any basis for disturbing this factual finding. During oral argument, I broached the subject with Mr Tshabalala, counsel for the appellant. He frankly conceded that he could not advance any cogent reasons for disturbing the magistrate's findings. Nor could I find any. It is moreover trite that a court of appeal will not lightly interfere with the credibility and factual findings of the trial court.

(**R v DHLUMAYO AND ANOTHER** 1948 (2) SA 677 (A).)

- [5] Accordingly, the appeal stands to be decided on the version of the state as gleaned from the record. It is briefly to the effect that the appellant was seen walking under trees in the dark in front of the school by Mariska Myburgh, who had

been standing at the gate of the school with her boyfriend, one Andries. The appellant was alone and there was nobody else in the school premises as the students had been away on school vacation. Next to the appellant was a suitcase hanging on a palisade. Another suitcase was lying nearby outside the fence. Mariska saw that the appellant was moving towards the back of the school and urged her boyfriend, Andries, to catch him. Andries obliged and apprehended the appellant. The police were called and the appellant was handed over to them, together with the stolen goods. The appellant gave no explanation to the police officer who arrested him and indeed refused to utter a word when questioned.

- [6] In court, the appellant not only denied having been in possession of the goods but also denied having been caught inside the school premises and gave a clearly false explanation of how he was apprehended. He said that he had been walking past the school when Andries confronted him, caught him and dragged him inside the school premises.

[7] From the acceptable evidence on record the following findings would be justified:

7.1 the appellant was spotted inside the school premises at night under suspicious circumstances.

7.2 he had absolutely no legitimate cause to be on the premises and failed to give any explanation therefor.

7.3 he was the only person in the area where he was spotted and where the stolen goods were found.

7.4 the goods had recently been stolen from Makau's house, which had been broken into.

The doctrine of recent possession applies (**S v PARROW** 1973 (1) SA 608 (A) at 604E.).

[8] There can be no other plausible explanation why the appellant falsely denied having been inside the school premises and for distancing himself from the stolen goods other than concealment of guilt. This factor strengthens the state case. Compare **S v MTSWENI** 1985 (1) SA 590 (A) at 593i to 594a; **S v M** 2006 (1) SACR 135 (SCA) paras [64] and [65].

[9] The only reasonable inference to be drawn from the proven

facts is that the appellant is the one who brought the goods there and further that he had stolen them after breaking into the house of the complainant in count 1. That means that the appellant was correctly convicted on count 1. The evidence discloses that he had no permission to be on the premises of Fakkkel School. Nor did he have any justification whatsoever for being thereon. He was accordingly also correctly convicted of trespass.

[10] Now counsel for the state, M/s Ferreira, correctly pointed out that although it is not desirable that the magistrate's court should take convictions together for purposes of sentence, nonetheless doing so does not *per se* entitle an appeal court to interfere with the sentence (**S v KEULDER** 1994 (1) SACR 91 (A)). Lumping the convictions together may have given the impression that the two offences were committed on the same premises but a perusal of the record shows that Makau's house is not on the premises of Fakkkel School.

[11] It is trite that sentence is a matter that falls within the discretion of the trial court and a court of appeal will interfere therewith only if there was a misdirection or irregularity in the

sentencing process or if the sentence imposed is shockingly inappropriate. Mr Tshabalala could only advance one ground for challenging the sentence. He submitted that the magistrate did not take into account the personal circumstances of the appellant and said this constituted a misdirection. However, he conceded that the appellant's personal circumstances had been put on record by his legal representative. A perusal of the record of the proceedings shows that the magistrate did consider the personal circumstances of the appellant and Mr Tshabalala's submission in this regard falls by the wayside. A sentence of six years imprisonment for housebreaking with intent to steal and theft, particularly considering the substantial value of the goods stolen, can hardly be considered inappropriate, let alone shockingly inappropriate.

[12] In the result, the appeal is dismissed in respect of both the conviction and sentence.

H. M. MUSI, JP

I concur and it is so ordered.

K. J. MOLOI, J

On behalf of the appellant: Adv. L. M. Tshabalala
Instructed by:
Bloemfontein Justice Centre
BLOEMFONTEIN

On behalf of the respondent: Adv. A. M. Ferreira
Instructed by:
The Director of Public Prosecutions
BLOEMFONTEIN

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