



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT. PRETORIA)

DATE: 25/09/09

MAGISTRATE PRAKTISEER

CASE NO: A300/2008

SUPREME COURT REF NO: 1808

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THE STATE v VILJOEN DIBAKWANE

REVIEW JUDGMENT

PRELLER. J

The accused was convicted of theft of a motor vehicle in the magistrate's court Praktiseer after a plea of guilty. He was convicted on 29 August 2008. The record was transcribed fairly promptly and was signed by the magistrate on 11 September 2008. The record reached the Registrar for review on 3 October 2008 and there is no explanation for the apparent delay of three weeks.

The case came before me on review on 6 October and on the next day I sent a query to the magistrate. The query was divided into two parts, the first one is no longer

relevant for present purposes. The second part comprised certain questions about the value of the motor vehicle which had an important bearing on the order made by the magistrate that the accused pay compensation to the complainant apparently in terms of section 297(1)(b) of the Criminal Procedure Act. The reply from the magistrate was only dated 31 July 2009. Annexed to the magistrate's answer is an affidavit by himself from which it appears that his motor vehicle was involved in a collision during November 2008, that the police had taken everything in the vehicle for safekeeping and that it had taken him a considerable time to get the documents that were in his car and which include the documents in the present case, back from the police.

Included in the affidavit is a paragraph which reads as follows:

"I wish to state further that the document related to the certificate of the motor vehicle and the last statement from the bank showing the installment amount and outstanding balance." (sic)

This was apparently in reply to the following question put by me to the magistrate:

"2. Of what is the 'outstanding balance' R82 000? If it is on an installment sale agreement, should that document not have been placed before the court?"

There is no reference in the record to any document. The following need to be said about the foregoing:

1. The delay of almost ten months in answering my query is unacceptable. From the very nature of the procedure of review it is essential that queries be attended to promptly. The query should have been answered before his car was involved in the accident.
2. It is not competent for the magistrate to attempt to amplify the record by submitting his own evidence in affidavit form.

The sentence imposed by the magistrate read as follows:

"Three years imprisonment suspended on condition accused compensate the complainant amount of R40 000,00 fine on instalment of R2 000 a month commencing on or before 7 September 2008 until the above amount is paid in full." (sic)

The problem that I had with the sentence was inter alia that there is no indication whatsoever of the value of the vehicle that had been stolen and destroyed by the accused. There was accordingly no basis upon which the compensation amount of R40 000,00 could be rationally based. The whole of the evidence from the complainant in this regard reads as follows:

"Yes, I tried to talk to him before this. However, he then told me -after I laid charges against him he then offered to compensate me. He has thus paid R6 000,00. The R2 000,00 is little at least R3 000,00 a month would be better. The outstanding balance is R82 000,00. I still pay the money and I need him to pay and it would n't help to take him to jail. That is all."

It will be noticed immediately that the value of the vehicle could not be established from the evidence of the complainant nor could her loss in the sense of an obligation to pay the purchase price of the stolen vehicle be reliably determined.

In a very helpful memorandum received from Mr Menigo of the office of the Director of Public Prosecutions it was suggested that the fact of the long delay in answering my query could be referred to the Magistrates Commission for further attention. I am, however, reluctant to do that in view of the fact that I have no indication that there have been other complaints about tardiness in dealing with review matters against the magistrate in question. I trust though that he will in future make sure to deal with review matters more promptly.

Mr Menigo also correctly pointed out that the sentence should be set aside and referred back to the magistrate in order for a proper- enquiry to be held for the determination of the value of the vehicle at the time of the commission of the offence and to reconsider the amount of compensation that is to be paid. I agree with that suggestion. I may finally point out that no period is mentioned for the suspension of the sentence and that this should also be attended to.

I accordingly propose the following order:

1. The conviction is confirmed but the sentence is set aside and the matter is referred back to the magistrate for a proper inquiry to be held in order to hear evidence and receive documentation so that the value of the vehicle at the time of

the commission of the offence may be determined. Any amounts already paid by the accused are to be taken into account in determining the amount outstanding and the period of suspension must be mentioned if sentence is imposed afresh.

F G PRELLER

JUDGE OF THE NORTH GAUTENG HIGH COURT

I agree

W L SERITI

JUDGE OF THE NORTH GAUTENG HIGH COURT