

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Appeal No. : A223/08

In the matter between:-

FANI JAMES BUWA

Appellant

versus

THE STATE

Respondent

CORAM: VAN DER MERWE, J *et* MATHEBULA, AJ

HEARD ON: 2 FEBRUARY 2009

JUDGMENT BY: MATHEBULA , AJ

DELIVERED ON: 12 MARCH 2009

JUDGMENT

[1] The appeal lies against sentence imposed by the Regional Magistrate, Frankfort. The appellant was convicted and sentenced as follows:

Charge 1: Robbery with aggravating circumstances as described in section 1 of the Criminal Procedure Act, 51 of 1977 (as amended) and sentenced to 15 (fifteen) years imprisonment.

Charge 3: Contravening the provisions of section 3 of Act 60 of 2000 (Unlawful Possession of Firearms) and sentenced to 5 (five) years imprisonment.

Charge 4: Contravening the provisions of section 90 of Act 60 of 2000 (Unlawful Possession of Ammunition) and sentenced to 1 (one) year imprisonment.

[2] In sentencing the appellant, the Regional Magistrate did not order that any of these sentences should run concurrently. In total, the appellant must serve 21 (twenty one) years imprisonment.

[3] Broadly the appellant and three others stormed into a house on the farm Riverside in the district of Frankfort on the 31st October 2004. They held the family and their domestic worker hostage by tying their hands with cables. They subjected them to one of the most humiliating treatment, *inter alia*, threats or intimidation and even beatings. Although a shot was fired, no-one was hit or sustained any fatal injuries. They made off with a considerable quantity of goods, arms and ammunition. It appears that their motive was to rob them of arms and ammunition. They were

arrested on the same day and most of the stolen property was found and returned to the rightful owners.

[4] It is trite law that sentencing is a primary domain of the trial court. The Court of Appeal should not lightly interfere with the sentence imposed by the trial court. See **S v PIETERS** 1987 (3) SA 717 (A) at 728B – C. The Court of Appeal can interfere if the trial court misdirected itself or the sentence is shockingly inappropriate.

[5] On behalf of the appellant, Mr. Van Rensburg submitted that the sentence is shockingly inappropriate; that the trial court should have ordered that the sentences run concurrently. Mr. Mthethwa, representing the respondent, made a concession in this regard and rightly so.

[6] It appears to me, with respect, that the Regional Magistrate adopted a value driven approach in sentencing the appellant. In so doing he misdirected himself by overemphasizing the seriousness of the offence and the interests of society over other factors like the personal circumstances of the

appellant. In the end he failed to strike a balance and came to the inappropriate sentence.

[7] All the offences committed on the day arose out of the same transaction. There were no fatal injuries sustained by the victims. All the stolen property was recovered and restored to the rightful owners. The personal circumstances of the appellant are of such a nature that one hardly finds criminal propensity on his part.

[8] The Regional Magistrate should have given thought to section 280(2) of the Criminal Procedure Act, No. 51 of 1977 as amended. The section reads as follows:

“(2) Such punishments, when consisting of imprisonment, shall commence the one after the expiration, setting aside or remission of the other, in such order as the court may direct, unless the court directs that such sentences of imprisonment shall run concurrently.”

Failure to apply the provisions of this section rendered the sentence harsh and inappropriate. In this matter, I am at

liberty to interfere with the sentence imposed by the Regional Magistrate.

[9] I make the following order:

1. The sentences on charges 1, 3 and 4 are confirmed.
2. In terms of section 280 of the Act, the sentences on charges 1, 3 and 4 will run concurrently so that the cumulative effect of the sentence is 15 (fifteen) years imprisonment backdated to the 6th of March 2007.

M.A. MATHEBULA, AJ

I concur.

C.H.G VAN DER MERWE, J

On behalf of appellant:

Adv. T.B. van Rensburg
Instructed by:
Legal Aid Board
KROONSTAD

On behalf of the respondent:

Adv. S.M. Mthethwa
Instructed by:
Director of Public Prosecutions
BLOEMFONTEIN

/sp