



IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case no. **A20/2024**

Review. **R18/2024**

In the matter between:

THE STATE

and

MOHLOKI JOSEPH MOKOENA

Accused

CORAM

MHLAMBI, ADJP *et* MANYE, AJ

DELIVERED ON:

13 FEBRUARY 2025

JUDGMENT BY:

MANYE, AJ

This is a review in terms of Section 304 of the Criminal Procedure Act, Act 51 of 1997.

[1] The Accused was charged with the offences of arson (count 1) and malicious damage to property (count 2). At the start of the trial proceedings, count 1 of arson was withdrawn by the state against the accused.

[2] Assisted by his legal representative, the accused pleaded guilty to the second count of malicious damage to property. In a written statement tendered by his legal representative in terms of the provisions of section 112 (1)(b) of the Criminal

Procedure Act, 51 of 1977, (the CPA), he pleaded guilty to the count of malicious damage to the complainant's property.

[3] The state accepted the plea and led no evidence on the charge of malicious damage to property. The magistrate was satisfied with the plea of guilty on count 2 (malicious damage to property) and duly convicted the accused.

Brief background facts:

[4] On the 19th January 2024, the accused, who had a relationship with the complainant, went to her residence. On arrival, the accused found the complainant in the company of another gentleman and after a brief conversation, the accused intervened when the said gentleman slapped the complainant.

[5] He left and returned with a shovel while insulting the accused. The accused left the place and returned armed with a golf stick which he used to break four windows of the complainant's corrugated structure. The accused poured petrol to the structure and set it alight.

[6] The accused was sentenced to undergo twelve (12) months imprisonment wholly suspended for a period of three (3) years on condition that the accused is not convicted of malicious damage to property committed during the period of suspension.

[7] A further condition attached to the suspension was that the accused was ordered to pay the complainant an amount of R4 965.00 which was to be paid in instalments of R500.00 each within the period of eight (8) months starting from the 31st May 2024 in terms of section 300 of the Criminal Procedure Act. The accused was further declared unfit to possess a firearm.

[8] The crisp issue to be determined by this court is whether the court *a quo* acted correctly in granting compensation.

[9] It is *trite* that when a person has suffered an injury or loss, he must be reimbursed for such injury or loss and that person can institute proceedings in the civil court for such relief. However, when that injury or loss arises out of a commission of a crime and a criminal prosecution ensues, that person may invoke on application to the same Court, the provisions of Section 300(1) of the Criminal Procedure Act which provides:

"Where a person is convicted by a Superior Court, Regional Court or Magistrate's Court of an offence which has caused damage to or loss of property (including money) belonging to some other person, the Court in question may, upon application of the injured person or of the prosecutor acting on the instructions of the injured person,¹ forthwith award the injured person compensation for such damage or loss – provided that:

- (a) A Regional Court or Magistrate's Court shall not make such award if the compensation applied for exceeds the amount determined by the Minister from time to time by notice in the Government Gazette in respect of the respective Courts."*

[10] The section envisages compensation on the base of "*upon the application of the injured person or of the prosecutor acting on the instruction of the injured person.*" The question that arises is whether the court *a quo* had such an application before it before making a compensation order.

[11] The answer to the above question lies in the prosecutor's address where the following is stated:

"Your Worship the instruction from the complainant was Your Worship that I bring an application in terms of Section 300 of the Criminal Procedure Act Your Worship that an order be made that the Accused reimburse the complainant for damages she has suffered Your Worship. Your Worship my learned colleague put forward that they will be paying some R500.00 each and every month Your Worship, Your Worship which if this Court accepts Your Worship and furthermore Your Worship with regards to the damages Your Worship paying R500.00 Your Worship would result in him having to pay over more than six (6)

¹ emphasis

*months Your Worship in order to fully reimburse the complainant Your Worship."*²

[12] In view of the above, we accept that there was a proper application before the trial court as contemplated in Section 300 of the Criminal Procedure Act.

[13] In the premises, the compensation was necessary and amounted to restorative justice.³

[14] To this end, this Court finds that there is no reason to interfere with the sentence imposed.

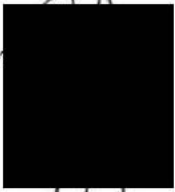
[15] In the circumstances the following order is made:

ORDER:

The order in terms of section 300(1) of the CPA is confirmed.

I concur.



T.L. MANYE, AJ

MHLAMBI ADJP

² See: Transcribed Record, p. 7 line 12 - 25

³ See: Raymond Daniel de Villiers v S 2023 (2) SACR 221 par 27