

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: A304/2023

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE

SIGNATURE

In the matter between:

CHINESI JUSTICE OBASI

Appellant

and

THE STATE

Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date and for hand-down is deemed to be 25 August 2025.

Flynotes: Appeal against conviction and sentence. Failure to testify. Factual findings of the trial Court cannot be interfered with. Wording in the section to be given their ordinary grammatical meaning taking into account the context and purpose of the section. Evidence before a trial Court established all the elements of the statutory offences. Conviction confirmed. Sentence not to be interfered with since there was no failure of justice. Held: (1) The appeal

against conviction and sentence dismissed. Held: (2) Conviction and sentence confirmed.

JUDGMENT

CORAM: MOSHOANA J (LENYAI J AND LEDWABA AJ CONCURRING)

Introduction

[1] Human trafficking exists because people are vulnerable to exploitation as a result of poverty, lack of education and desperation. It is a modern-day form of slavery. Often times, human trafficking is motivated by money. Victims of human trafficking are most of the time abused, confused and disorientated. People are trafficked for sex, labour and other related reasons.

[2] In order to deal with the menace of human trafficking, in 2013 the South African legislature passed the Prevention & Combating of Trafficking in Persons Act (Trafficking Act)¹ into law. The preamble of the Trafficking Act amongst other things states that “*concerned by the increase of trafficking in persons, especially women and children, and the role played by the organised criminal networks in trafficking of persons globally*” the Parliament passed the Act.

[3] The above said, this is an appeal which reached this Court after leave to appeal was granted to this Court by the Honourable Justices Ponnann JA and Siwendu AJA of the Supreme Court of Appeals. The appeal is against the conviction and sentences imposed by the erudite Madam Justice Tolmay. The appeal is opposed by the State. The appellant, Mr Chinesi Justice Obasi was on 14 December 2017 convicted on three counts. On 18 September 2018, he was sentenced to 10 years imprisonment in respect of counts 1 and 2 and the first

¹ Act 7 of 2013 as amended.

two years on count 1 are to run concurrently with count 2. In respect of count 9 he was sentenced to 1 year imprisonment also to run concurrently with counts 1 and 2, resulting in an effective term of imprisonment of 18 years.

Background facts and evidence

[4] The appellant was arraigned together with two other accused persons. He was arraigned as accused number 3. In count 1, the State alleged that on or about the period 1 April 2016 up to and including 30 September 2016 and at or near Pretoria, he did unlawfully and intentionally harbour or lease another person, to wit B[...] P[...] M[...] (B[...]) within the borders of the Republic of South Africa, by means of threat or use of force or other forms of coercion and the abuse of vulnerability, aimed at B[...] P[...] M[...]. In count 2, the State alleged that on or about the period 1 May 2016 up to and including 1 September 2016 and at or near Pretoria, the appellant did unlawfully and intentionally harbour or lease another person, to wit P[...] T[...] M[...] (P[...]) within the borders of the Republic of South Africa, by means of threat or use of force or other forms of coercion and the abuse of vulnerability, aimed at P[...] T[...] M[...].

[5] In count 9, the State alleged that the appellant upon or about the period 1-30 March 2005 and at or near Pretoria did knowingly and intentionally, and for the purpose of obtaining residence in the Republic of South Africa, commit a fraudulent act or make a false representation by conduct, statement or otherwise, to wit, married Jaqueline Madisha Obasi (Jaqueline), a South African citizen, whereas in fact they did not live together as husband and wife and that the appellant married Jaqueline Madisha Obasi for the sole purpose of obtaining permanent residency in the Republic of South Africa.

[6] In December 2015, B[...] moved to Sunnyside, Pretoria due to family issues. She had discovered that the man she thought was her biological father was not. She met with a Nigerian man and started a love relationship with him. Owing to the pressures of earning an income she became involved in prostitution. She was recruited into prostitution by the Nigerian man she fell in love with. The money she earned out of prostitution was paid over to this Nigerian man. After a while, the relationship with the Nigerian man ended and she returned to her parental home. She did not stay for long with her parents. She returned to Sunnyside. Unfortunately,

the Nigerian man had a new girlfriend. Since she was unemployed and had no place to stay, the Nigerian man arranged for her to stay with the appellant. The Nigerian man transported her to a flat number 4[...] at J[...] C[...].

[7] P[...] struck a friendship with the appellant's girlfriend around 2009. In May 2016 she came to Pretoria looking for the appellant and his girlfriend. She met with B[...] who directed her to the appellant. The appellant ordered B[...] and P[...] (the duo) to prostitute themselves so as to earn money for the board and lodging as well as drugs he supplied them with. The appellant monitored their movements at all times. He constantly telephoned them. The appellant also handed them over to his co-accused, who treated them the same way as the appellant. The duo was harboured at 4[...] J[...] C[...] and also entertained clients who came to buy and use drugs there when they worked as prostitutes. The appellant and his co-accused, as a means to keep the duo vulnerable and dependent on them provided them with drugs. They were not allowed to go shopping alone, go to the hair salon alone. They were not permitted to leave the flat for any other reason other than them working as prostitutes.

[8] The appellant in March 2005 married Jaqueline. They did not live together as a husband and wife. As the State alleged, he married Jaqueline for the sole purpose of obtaining permanent residency in the Republic of South Africa. In due course, the appellant and his co-accused were arrested. Jointly they faced 9 counts. The State led the evidence of the duo and other witnesses. The appellant opted not to testify in his defence. After the trial, the appellant was convicted and sentenced as indicated above. Before this Court, he is challenging both his conviction and sentences.

Grounds of appeal

[9] In the notice of appeal, the appellant raised the point of lack of jurisdiction of the trial Court. This point was jettisoned in the heads of argument submitted on behalf of the appellant and was not argued before us. Additionally, a ground of failure to call further witnesses by the State was raised and equally jettisoned. The appellant stated that the trial Court erred in that it did not consider properly or at all the evidence of the defence. He criticised the approach adopted by the trial Court in assessing the evidence of the witnesses. Regarding sentences imposed, it was

contended that the sentences were shockingly inappropriate and without justification. The sentences overlooked the personal circumstances of the appellant.

Analysis

[10] As an opening gambit, with regard to conviction, the evidence of the State stood uncontroverted. This Court fails to appreciate a ground that the trial Court failed to properly consider the evidence of the defence. The question is, which evidence, since the appellant failed to testify. Versions put during cross-examination remains versions and do not transmute into evidence until they are repeated under oath. In *Osman and Another v Attorney-General, Transvaal (Osman)*², the Constitutional Court, with sufficient perspicacity expressed itself in the following manner:

“Our legal system is an adversarial one. Once the prosecution has produced evidence sufficient to establish a *prima facie* case, an accused who fails to produce evidence to rebut that case is at risk. The failure to testify does not relieve the prosecution of its duty to prove guilt beyond reasonable doubt. An accused, however, always runs the risk that, absent any rebuttal, the prosecution’s case may be sufficient to prove the elements of the offence. The fact that an accused has to make such an election is not a breach of the right to silence. If the right to silence were to be so interpreted, it would destroy the fundamental nature of our adversarial system of criminal justice.”

[11] In following the similar approach, the Constitutional Court in *S v Boesak (Boesak)*³ had the following to say:

“[25] Similarly, if in the course of the trial there is evidence that a document was written by the accused, and if the accused fails to challenge that evidence, or raise forgery as an issue, a court may be entitled to hold that in the absence of testimony from the accused the evidence is sufficient to prove that the accused was the author of the document. That is what the SCA did in the present case. It analysed the evidence it considered to be relevant to this

² 1998 (11) BCLR 1362(CC).

³ 2001 (1) BCLR 36 (CC).

issue and came to the conclusion that in the absence of a challenge or evidence to the contrary there was sufficient proof that the letter had been written by Dr Boesak.”

[12] The trial Court in applying the principle in *Boesak* concluded thus:

“[88] I will as a result evaluate the evidence in totality in order to determine whether there is sufficient evidence to convict the accused on the separate charges.”

[13] The trial Court indeed proceeded to analyse the evidence of the duo and reached a conclusion that the duo was harboured by the appellant. The evidence analysed showed that they were exploited. Their evidence created a background of the typical relationship between a trafficker and a victim. Before us, attorney for the appellant, Mr Moldenhauer, forcefully argued that as required by section 4(1), harbouring was not proven by the State as such the appellant was wrongly convicted of the statutory offence contemplated in section 4(1) of the Trafficking Act. Mr Moldenhauer was critical of the approach taken by the trial Court. The trial Court had said:

“[96] ... The word harbour is not defined in the Act; therefore, I resorted to the Oxford Dictionary where the word is *inter alia* defined as follows:

“1 ... *occupy, shelter or lodging. Latterly especially for concealment*”

[97] The word harbour seems to suggest an element of concealment, which will fit into the specific circumstances under which the women were given shelter.

[98] They were given a home, where they could live... They were not allowed to leave the flat if and when they would do. One can safely also assume that for the aforesaid reasons they were “harboured” as defined by the Act.”

[14] This Court unfortunately does not agree with the criticism levelled by Mr Moldenhauer. It is settled law that a word or phrase is to be given its ordinary

meaning unless it is defined in the statute where it is located⁴. It is also rested law that interpretation involves an exercise of consideration of text, context and purpose⁵. Mr Moldenhauer referred us to the judgment of *S v Habib (Habib)*⁶. The learned Acting Judge Coertse sought to interpret section 4(1). In congruent with the trial Court, the learned AJ confirmed that none of the words used in section 4(1) were defined. The elements of the statutory offence of trafficking as set out in section 4(1) of the Trafficking Act, are:

- (a) By doing any of the following; delivers, recruits, transports, transfers, *harbours*, sells, exchanges, *leases*, or receives;
- (b) Another person within or across the borders of the Republic;
- (c) By means of any of the following manners;
 - *A threat of harm*;
 - The threat or *use of force or other forms of coercion*;
 - *The abuse of vulnerability*;
 - Fraud;
 - Deception;
 - Abduction;
 - Kidnapping;
 - The *abuse of power*⁷

[15] If harbouring takes place by means of for instance, threat of harm; use of force or other forms of coercion; abuse of vulnerability; or abuse of power, the statutory offence has been established. The undisputed evidence of assault of the duo establishes threat of harm and use of force. Abuse of vulnerability is defined in section 1 of the Trafficking Act. Amongst the vulnerabilities lay (a) addiction to the use of any dependence-producing substance; (b) social circumstances; and (c) economic circumstances. It is clear from the evidence of the duo that the appellant

⁴ See *Independent Institute of Education (Pty) Limited v Kwazulu-Natal Law Society and Others* [2019] ZACC 47 (11 December 2019).

⁵ See *University of Johannesburg v Auckland Park Theological Seminary and Another* 2021 (8) BCLR 807 (CC).

⁶ (SS50/2023) [2025] ZAGPJHC 87 (27 January 2025).

⁷ Other manners in (i) and (j) were omitted.

had abused the power he had over the duo. This Court agrees with the decision of *S v Ayuk (Ayuk)*⁸ regarding the definition of the phrases abuse of power and vulnerability.

[16] Given the uncontested evidence of the duo, which was corroborated by others, this Court is unable to fault the factual conclusions reached by the trial Court. A Court of appeal must be slow to interfere with factual conclusions reached by the trial Court. Accordingly, the appellant was correctly convicted of counts 1 and 2. Turning to count 9. Section 49(14) of the Immigration Act⁹ provides amongst others that commission of fraudulent act or making of false representation amounts to an offence. The evidence of the state suggested that the appellant and Jaqueline were not living as husband and wife. Mr Moldenhauer submitted that the appellant and Jaqueline had a good faith spousal relationship contemplated in section 26 of the Immigration Act. This Court disagrees. The fact that the appellant and his wife did not live together can only suggest that their marriage was for the purposes of gaining benefits under the Immigration Act. Such amounts to fraud or misrepresentation. This Court agrees with the conclusions reached in *Mahmood v Director-General Department of Home Affairs (Mahmood)*¹⁰ regarding the definition of the phrase good spousal relationship.

[17] Accordingly, the appellant was correctly convicted with count 9. For reasons outlined above, the appellant's appeal on conviction falls to be dismissed. I now briefly turn to the issue of sentence.

[18] When it comes to sentence unless a failure of justice is demonstrated, a Court of appeal is not entitled to interfere¹¹. The trial Court deemed it appropriate that in order to avoid a double conviction, and having found the appellant guilty of counts 1 and 2, the appellant should not be found guilty of count 5 separately, despite his admission of the elements of the offence. Before us, the appellant contended that he

⁸ 2024 (2) SACR 609 (WCC).

⁹ Act 13 of 2002 as amended.

¹⁰ Case (22394/2012) dated 8 May 2013 (WCC)

¹¹ See *S v Bogaards* 2013 (1) SACR 1 (CC).

was only guilty of count 5 and the appropriate sentence would be an imprisonment period not exceeding 3 years with an option of a fine. This Court declines an invitation to doubly convict the appellant. The powers of this Court are circumscribed by section 19 of the Superior Courts Act.¹² Since there is no double conviction, there is nothing for the appellant to appeal. There is no cross-appeal by the State.

Conclusions

[19] As indicated above, the appellant was correctly convicted of counts 1, 2 and 9. His appeal against such convictions falls to be dismissed. Regarding the sentence imposed, the trial Court found substantial and compelling circumstances and deviated from the prescribed life imprisonment sentence. An appeal Court may not interfere unless it is clear that the choice the trial Court preferred is at odds with the law.¹³ There are no reasons advanced to permit this Court to interfere with the sentence imposed by the trial Court. Regarding the double conviction, this Court simply declines an invitation of the appellant.

[20] For all the above reasons, I propose to make the following order:

- 1. The appeal against conviction and sentence is dismissed.**
- 2. The conviction and sentences are confirmed.**

**GN MOSHOANA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

**M D LENYAI J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

¹² Act 10 of 2013.

¹³ *Florence v Government of the Republic of South Africa* 2014(6) SA 456(CC) at para 113

(I agree and it is so ordered)

LPG LEDWABA AJ
ACTING JUDGE OF THE HIGH
COURT GAUTENG DIVISION,
PRETORIA

(I agree and it is so ordered)

APPEARANCES:

For the Appellant:

HW Moldenhauer

Instructed by:

Moldenhauer Attorneys, Wonderboom.

For the State:

A Roos

Instructed by:

NDPP

Date of the hearing:

18 August 2025

Date of judgment:

25 August 2025