



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable

Case no: CC19/2024

In the matter between:

THE STATE

and

JACQUEN ROWHAN APPOLLIS

Accused 1

RACQUEL CHANTEL SMITH

Accused 2

STEVENO DUMAIZO DUWAYNE VAN RHYN

Accused 3

Neutral citation:

Coram: N.C. ERASMUS

Delivered: 02 May 2025

Summary:

ORDER

On Count 1: You are guilty of the contravention of section 4(1) of the act, read with the other legislation on trafficking in persons in relation to Joshlin Smith.

On Count 2: You are also convicted of kidnapping.

JUDGMENT

ERASMUS, J:

- [1] Joshlin, a young child who vanished and is still missing. Even though the missing child is the primary focus of this matter. Therefore, this matter is a criminal case in which we need to ascertain the guilt or innocence of the parties charged with the criminal activity.
- [2] A popular saying, often repeated, asserts that it takes a village to raise a child. It suggests, among other interpretations, that a person is not isolated. A person is defined through their relationships with others, and it is crucial that a child is safeguarded by those in their environment to genuinely flourish within society. There are additional implications to consider if we approach this matter with the seriousness it deserves. For a village to raise a child, it is essential that the village is healthy and that the material conditions are conducive to the child's flourishing, while keeping in mind that we are discussing the life of a child.
- [3] This situation presents a specific perspective and tone. We find ourselves in a village where the child was not protected. This situation is not solely attributable to the community where she was born and raised. The public interest in this case highlights that various factors, including the material conditions of Joshlin's

upbringing, play a significant role. A village does not exist in isolation, nor is a child raised in a village in solitary existence. It is, and remains, the responsibility of the State, particularly the judicial system, to ensure that children are safeguarded.

[4] It is our duty to ensure that every child raised in our village, are safeguarded as members of society, upholds that protection. It is our responsibility to ensure that everyone is safeguarded, allowing every child in our village to grow into an active and contributing member of society.

[5] The Act for which the three individuals are charged was enacted precisely for one of these reasons. I focus on the preamble of the Prevention and Combatting of Trafficking Persons Act No. 7 of 2013, which states:

“To give effect to the Republic's obligations concerning the trafficking of persons in terms of international agreements; to provide for an offence of trafficking in persons and other offences associated with trafficking in persons; to provide for penalties that may be imposed in respect of the offences; to provide for measures to protect and assist victims of trafficking in persons; to provide for coordinated implementation, application and administration of the Act; to prevent and combat the trafficking in persons within or across the borders of the Republic; and to provide for matters connected therewith.”

[6] Section 41(1)(b) of this Act establishes an integrated information system aimed at facilitating effective monitoring and implementation of the Act. It also recommends interventions concerning trafficking in persons by collating and analysing information obtained under sections 25(4)(c), 39, 44(1)(d), 44(5)(c), and 44(7)(c), with the goal of determining, among other things, the establishment of integrated information systems and related matters.

- [7] The Act also mandates a rigorous application, leading to the establishment of monitoring systems. I have conducted brief research, but I was unable to locate a system that is both accessible and operational for the implementation of the Act. Perhaps it is time to take action, as this situation is not unique. As Ms. Swanepoel argued on behalf of the State, it may indeed be the first of its kind, however, we lack the necessary records in order to effectively combat it.
- [8] Regarding the individuals present before the Court and the allegations against them, Mr. Appollis was 31 years old at the time of the charge; Mr. Van Rhyn was 27, and Ms. Smith was 33.
- [9] I observed the other day, when I signed the warrant of detention and postponed the matter to today, that yesterday, on the 1st of May, was her birthday. I was reminded of that when I examined the evidence of Ms. Mickeyla Daniels, particularly regarding how her date of birth was recorded. If she was 33 at the time of her arrest, she would have turned 35 yesterday. I referenced the ages of the three individuals in relation to the charge itself as well.
- [10] They face various charges and alternatives, which I find unnecessary to review in detail for today's proceedings. It is noted that between the 18th and 19th of February 2024, in the Tsitsiratsitsi area of Middelpos, Joshlin Jacqueline Smith, who was six years old at the time and born on 23rd October 2017, was trafficked. Consequently, the charges are filed under section 4(1), 10(1)(b), in conjunction with (4)(1), and 10(1)(c) in conjunction with (4)(1) of the Act. There are primary and alternate charges, along with an additional charge of kidnapping.
- [11] In the main and alternate charges, the State must prove three components. This raises the question, whether this is a necessary element when the victim is a child. Generally, the State is required to demonstrate the actions taken, as the provisions of the Act stipulate that any person who delivers, recruits, transports,

transfers, harbours, sells, exchanges, leases, or receives another person is subject to scrutiny.

[12] In the main and alternate charges, the State must prove three components. This raises the question, whether this is a necessary element when the victim is a child. Generally, the State is required to demonstrate the actions taken, as the provisions of the Act stipulate that any person who delivers, recruits, transports, transfers, harbours, sells, exchanges, leases, or receives another person is subject to scrutiny. The means are presented, followed by a range of alternatives that encompass [1] kidnapping, [2] the abuse of power, [3] the direct or indirect exchange of payments, and similar actions, along with [4] the underlying purpose for these actions.

[13] It is evident that the State is required to demonstrate beyond a reasonable doubt that the accused individual engaged in any of the acts specified in the indictment, utilising any of the means outlined, with the intent or with an exploitative objective.

[14] It was contended on behalf of the State that international law does not necessitate proof of means in cases involving child victims. They specifically referenced section 11(1) of the Act and relied on the unreported decision in *S v Bheki Wellington Nxasana and 2 Others*, an unreported case from the Eastern Cape High Court in Gqeberha, under case number CC16/2018, with judgement delivered on June 14, 2022.

[15] I take a moment to observe that, regrettably, it appears that some of the judgements from the Eastern Cape have not been made available on Saflii. I brought it up, Ms. Swanepoel, with my colleagues in the Eastern Cape yesterday to make them aware of it. This judgement was delivered by Goosen J at that time, addressing the charge under section 4(1) relevant to our discussion. The judge provided a comprehensive analysis of the law, incorporating academic

articles and referencing international instruments. He concluded that when the victim is a child, it is unnecessary to prove that one or more of the other sections of the Act must be established.

[16] For the purposes of this judgement, which is delivered *ex tempore*, further explanation is unnecessary as it is clearly articulated in *Nxasana* by Goosen J. However, it is important to note that I fully concur with the legal exposition and the conclusion reached by the Court in *Nxasana*. To the extent that it pertains to this case, it is the law I am considering. This indicates that there is a distinction in the elements that the State must prove when the victim is a child. It will become clear later why I feel it is important to make that distinction.

[17] In an effort to fulfil the responsibility that lies with the State, they summoned 35 witnesses and submitted 42 documentary exhibits along with five physical exhibits. We conducted an on-site inspection, and this trial has now lasted 35 days. I did not keep track of the hours, but it was many long hours.

[18] No evidence was presented in support of the defence. The result was that most of the evidence either became common cause or remains undisputed before the Court. I am aware that when dealing with certain specific witnesses, I must assess their credibility and reliability with great care, and I will address those witnesses in detail later.

[19] I have chosen to present the facts that are commonly accepted or undisputed before the Court, not in the typical manner of a summary trial where evidence is fully summarised, but instead to weave together the testimonies of various witnesses into a timeline. From this timeline, I will subsequently draw conclusions and inferences at the conclusion of the judgement.

[20] I chose to begin my timeline significantly earlier than what the State recommended. This is based on the evidence presented to me. According to the

testimony of Ms. Silizwe Mbambo, a social worker in the Department of Social Development, Ms. Smith has been recognised by the department as an individual requiring support since 2016.

[21] She was the adopted child of her grandmother, and based on the contents of these files, since Ms. Mbambo was not employed by the department at that time, a predecessor documented the information. Ms. Smith struggled with an addiction issue that intensified the strain in her relationship with her grandmother.

[22] As I mentioned, Ms. Mbambo lacks personal knowledge of the information, and technically, that evidence qualifies as hearsay. It is, however, unchallenged initially, and there is no prejudice to Ms. Smith in admitting the evidence; thus, the evidence would be admissible under the Evidence Amendment Act as hearsay evidence that is permissible. That was in the year 2016.

[23] During 2017, the grandmother once more informed the department that Ms. Smith had given birth to another child. That child was Joshlin. The older son was under the care of the grandmother, who received a social grant for him. However, she was unable to provide the whereabouts of Ms. Smith, despite stating that she is her grandchild. They were unable to locate her.

[24] On the 20th of March 2018, when Joshlin was approximately five months old, Ms. Smith visited the department's offices to seek assistance, as she was reportedly in an abusive relationship and required help, as well as support for her substance addiction. At that point, Joshlin's birth had yet to be registered. Ms. Smith received assistance from the social workers to register Joshlin's birth and to help her enter a rehabilitation centre.

[25] This is the first instance during which we encounter the name Natasha Andrews, as when Ms. Smith was committed, Joshlin was entrusted to the care

of Natasha Andrews and her family. Ms. Andrews testified that they sought to adopt Joshlin in 2018, but the parents were uncooperative.

[26] She did not provide a specific date; however, she indicated that it was here, which is corroborated by the events of 2018 involving Ms. Smith and Joshlin. The relationship among Ms. Andrews, Ms. Smith, and Joshlin is significant, particularly the connection between Ms. Smith and Ms. Andrews, which will be pertinent later on.

[27] However, although they did not adopt Joshlin, during school holidays and often on weekends, although Joshlin was staying with her mother, she would often spend time with the Andrews family.

[28] In 2023, a few years later, Joshlin was in Grade R. When school holidays arrived, it meant longer periods to be enjoyed with the Andrews family. Ms. Smith and Ms. Andrews would maintain regular contact.

[29] On a chilly August morning in 2023, with the temperature hovering at five degrees, I was driving in as Mr. Nico Steven Coetzee made his way to work. He comes from Namaqualand, as does Ms. Smith. He performs various tasks at people's residences and is also an evangelist within the Christian faith. In 2016, he attended a memorial service at a funeral, where he met Ms. Smith. Upon discovering their shared origins, they exchanged friendly greetings. Although their encounters were infrequent from that time until 2023, each meeting was marked by a warm camaraderie.

[30] Mr. Coetzee suggested that they might have been seen as friends, and he referred to her, while she in return called him her 'homie'. Throughout the process, she asked him to check if he could secure a position for her to undertake domestic work with some of the individuals for whom he carried out his duties.

- [31] On that morning I mentioned, he was taken aback to see her at that hour, as he initially thought it was just someone out for a jog. She appeared distressed and remarked on a troubled family life. He sought to understand her origins and her destination. At that moment, he did not know where she lived. She gestured over her shoulder towards a blue house and mentioned that her home was just behind it, explaining that she was heading to a cleaning job. She entrusted the children to Boeta, Mr. Appollis. Due to the difficult family circumstances she faced, she was preparing for the removal of the children. It was revealed later that the reference pertained to a child.
- [32] The statement of Mr. Coetzee was submitted as evidence, revealing that it holds little significance in the broader context.
- [33] When he enquired about where she was going and to whom, she did not respond directly but mentioned that she was waiting for people who were supposed to arrive, but they had let her down. However, if they were to show up now, she would be willing to accept less than the R20 000 and would be content with R5 000. She gestured animatedly and informed him that in January or February of the coming year, he would witness what unfolds in Middelpos and Diazville: "It will resemble a movie scene filled with cars and people, they will search but not find." These were his precise words.
- [34] She remarked that the child would achieve great things. He recalled her words, as the weather conditions at that time were quite unusual. During the September school holidays of 2023, they spoke again when he saw Joshlin, and he realised her eyes were the most beautiful he had ever seen. It is more eloquently conveyed in the Namaqualand manner, as Mr. Coetzee articulated.
- [35] Ms. Laurentia Lombaard, whose testimony I will address in detail later, resides not far from Ms. Smith and Mr. Appollis. They were friends with whom she had

shared much, yet they were also companions in substance use. They would encounter one another daily while using drugs.

[36] Based on the evidence at hand, it appears that Ms. Smith was the source of financial support and frequently assisted Ms. Lombaard by providing food for her children. Ms. Lombaard had four children, two of whom were living with her and her partner, Ayanda.

[37] On Sunday, February 18, 2024, a detective visited the Appollis and Smith residence to enquire about the loss of chickens from a nearby farm. The complainant in the chicken theft case was identified, and Ms. Smith responded by expressing disbelief that this complainant would accuse Mr. Appollis. She further stated that she would seek revenge by informing the complainant's wife of his infidelity. More powerful language was employed.

[38] A heated argument ensued between Mr. Appollis and Ms. Smith, which ultimately escalated to Ms. Smith breaking a window and threatening to stab Mr. Appollis. Following the shattering of the window, Ms. Smith and Mr. Appollis entered the house, where Ms. Lombaard was able to overhear their conversation. They were discussing Joshlin.

[39] It is important to observe that Mr. Appollis, in his statement admitted during the trial-within-a-trial, corroborates a discussion in the same vein as revealed by Ms. Lombaard and the subsequent interview with Captain Lombard. Mr. Appollis affirmed the argument and also verified that both children were present.

[40] Ms. Paulina Tshosa, unfamiliar with any of the characters involved, was heading to get her hair done in the late afternoon; that evening, though uncertain of the exact time, was Sunday, 18 February 2024. The path to the salon would lead her by the stones near the residence of Mr. Appollis and Ms. Smith. She recounts

this argument, noting that Ms. Smith pulled Joshlin towards the house and said, "Ek sal jou wys."

- [41] It is worth mentioning that it remains ambiguous whether these words were aimed at Joshlin or Mr. Appollis, considering the origins of the dispute. Ms. Tshosa suggested that it was hinted. She also identifies Ms. Lombaard or describes someone who resembles her. This is an aspect I will revisit later.
- [42] Ms. Lombaard stated that Ms. Smith subsequently brought Joshlin to a white Polo vehicle, where they encountered a woman dressed in traditional attire, notable for the distinctive white spots on her face. She refers to this individual as a sangoma based on her appearance. She observed Ms. Smith take something that she had tucked into her trousers, after which she went back to her house with Joshlin.
- [43] She then informs us that she overheard Ms. Smith telling Mr. Appollis that she received R20,000. Ms. Lombaard then approached Ms. Smith while Mr. Van Rhyn was present, and upon enquiring, Ms. Smith stated that she had sold her child, Joshlin, and had done something bad. Strong words were used, but for her silence, Ms. Lombaard will receive R1,000 and Mr. Van Rhyn R1,200. She stated that both she and Mr. Van Rhyn accepted the offer.
- [44] The next morning, earlier than usual, that was Monday 19 February 2024, Ms Lombaard went around to the Smith residence where she found Mr Appollis, Mr Van Rhyn, Ms Smith and the three children of Ms Smith. According to her Ms Smith would have given instructions that the handover of Joshlin would take place around two o'clock in the afternoon. Thereafter Ms Smith left with the youngest of the three children.

- [45] Both Joshlin and her older brother did not attend school that day. The reason for this not attendance, given to different persons at different times, changed between unwell and dirty school clothes.
- [46] Returning to Ms. Smith, she was employed by Ms. Carlyn Zeegers and her daughter Kelly, carrying out general housework. On that morning, Ms. Carlyn Zeegers noted that Ms. Smith arrived remarkably early; she received the keys to Kelly Zeegers' house. It became unclear whether she went to work at Kelly Zeegers' house or not. At a later stage, it was Kelly Zeegers who reviewed the CCTV footage, and no recordings of Ms. Smith can be found for the 19th of February.
- [47] Meanwhile, in Middelpos, Joshlin remained at home with Ms Lombaard, Mr Appollis, and Mr Van Rhyn in attendance. Ms. Lombaard stated that she traded one of her bags for a quarter of a Mandrax tablet, which was then consumed by the three adults present. During cross-examination, there was a dispute regarding who participated in this consumption; however, both Mr. Appollis and Mr. Van Rhyn confirmed their involvement in the statements they provided to Colonel Pretorius and Captain Seekoei.

Turning back to the events of the 19th

- [48] At some point before two o'clock in the afternoon, Ms. Smith returned to Carlyn Zeegers' house, where she borrowed R50 and headed home. Ms. Lombaard recounts that it was at that moment that Ms. Smith escorted Joshlin to the car, the same white Polo as the day before.
- [49] Mr. Appollis, Van Rhyn, and Nico were present. Carlyn's evidence indicates that Ms. Smith was absent for about half to three quarters of an hour. Ms. Smith then returned to the house in Middelpos at approximately five o'clock, after which she,

Mr. Appollis and Mr. Van Rhyn took a petrol canister to be filled. They purchased some Tik and smoked it.

- [50] Mr Appollis and Mr Van Rhyn were to collect money for items sold earlier, which included a microwave. It is interesting to note that Ms Lombaard also refers to this; Joshlin was not home. Nobody is searching for Joshlin at that time; Ms Smith shows no concern; Mr Appollis shows no concern.
- [51] Mr. Appollis and Mr. Van Rhyn later left for Delmakie Street to continue their activities for the remainder of the evening. The exact moment Ms. Smith expressed any interest in locating Joshlin remains uncertain; however, around 20:20 that evening, she, accompanied by another individual who may have been Namhla Ntinzi, visited the residence of Ms. Andrews.
- [52] Ms. Andrews stated that Ms. Smith asked if Joshlin was with her. When enquired about Ms. Smith's demeanour, she stated that Ms. Smith did not appear anxious to her. The witness conveyed this opinion. I have highlighted the extensive and close connection between Ms. Smith and Ms. Andrews.
- [53] Ms. Ntinzi and Ms. Smith were conducting a search, and at one point, they visited a residence on Peter Mokaba Street, which they had identified as a possible location for Joshlin. Ms. Ntinzi expressed her concern regarding Ms. Smith's prolonged stay inside the house and noted that the search had not been resumed. When she enquired about the reason for the delay, she was informed that Ms. Smith was charging her phone. At that point, Ms. Ntinzi insisted that they notify the police; it was around 21:30 in the evening.
- [54] The complaint was attended by Sergeant Kobese and Constable Gongotha. They had enquired at both the Zeegers residences and as Ms Smith did not have a photograph of Joshlin, they collected same from Ms Andrews.

- [55] Once all the administrative tasks were completed, and Mr. Appollis was located on Delmakies Street, a statement was gathered from Ms. Smith for a missing person's report, this was designated as Exhibit QQ. What was notable in that statement was that Joshlin did not attend school because she was, I quote, "not feeling well." Upon her return at around 13:50, the statement indicates that Mr. Appollis was not present at home. There is some ambiguity regarding whether she enquired about Joshlin's location and whether Mr. Appollis was searching for the child.
- [56] However, in the same statement, which is the source of my confusion, it is also noted that the father last saw the child at approximately 13:00, or one o'clock; there was no mention of Mr. Van Rhyn. Once the police had completed their work, Mr. Appollis and Ms. Smith retired for the night, concluding their search at that point.
- [57] Ms. Andrews stated that she encountered Ms. Smith early the following morning, and once more, she did not appear anxious. The police were now mobilising in response to the missing person's report. Detective Milstein and Detective Sergeant Refilwe Sekhobe were engaged in an investigation in Swartland when the call came through to Saldanha.
- [58] Detective Sergeant Milstein gathered a statement from Mr. Appollis. Three aspects were particularly notable. He mentioned that Joshlin had a cold, but he did not refer to Mr. Van Rhyn. However, around 11 o'clock, he washed the children's clothes. Both children were home along with him when Ms. Smith returned at lunchtime, where she stayed for approximately 20 minutes.
- [59] Detective Sergeant Sekhobe then went around to Ms Lombaard. This statement brought a new issue to light: the presence of Mr Van Rhyn.

- [60] On the morning of 20 February, the class teacher, Ms. Edna Maart, reached out to Ms. Smith. Despite her inquiry regarding Joshlin's absence from school the previous day, she received no response from the parents. It also became clear at that time, in addition to Ms. Smith's remark to Lieutenant Colonel Sebola, the station commissioner, regarding the child making her famous, that neither Ms. Smith, Ms. Lombaard, Mr. Appollis, nor Mr. Van Rhyn took part in the search. In contrast, numerous police officials, community members, and individuals from distant places were searching tirelessly, both day and night.
- [61] Let us return to the day of the 20th, as that night, Ms. Smith stayed at Kelly Zeegers' home and participated in an interview. Her concern was that this is now Kelly Zeegers' concern, because Ms. Smith, also known as Kelly, showed no emotion and did not appear to be worried about the missing child; she slept soundly while Ms. Zeegers could not. During the interview, when suggestions arose regarding Mr. Appollis's potential involvement, she reacted with aggression.
- [62] On 23 February, just a few days later, Ms. Smith met with at least two individuals who provided testimony in court. I would like to focus on Ms. Silizwe Mbambo, the social worker, who became involved at the request of her manager. This marked her first engagement with Ms. Smith, aimed at determining what support they could offer, particularly concerning Ms. Smith's missing child.
- [63] Ms. Smith informed the social worker that Joshlin was unable to attend school due to her clothes being dirty and the lack of soap. I take a moment to reflect. In her previous and most recent statement, Ms. Smith indicated that she returned home at 13:50. What was the source of the soap that Mr. Appollis utilised at 11 o'clock? During Ms Mbambo's testimony, she recounted her efforts to assist Ms Smith in reaching a safe location; however, Ms Smith was not cooperative.

- [64] On that same day, the teachers took part in the search, and Ms. Maart was at the filling station when, unexpectedly, Ms. Smith arrived in the vehicle. It was at that moment that she informed Ms. Maart about the call she received from a seer, indicating that the child was on a ship bound for West Africa. Before she reached the vehicle, she quietly told Ms. Maart to remember that Boeta, Mr. Appollis, is innocent.
- [65] It is now clear from my summary that there were discrepancies in the reports regarding the missing persons inquiry. From the 20th to Sunday the 25th, Captain Lombard, who is part of the Provincial Organised Crime Kidnapping Task Team and later became the lead investigator, had contact with Sergeant Milstein. Initially, there were challenges in reaching him due to an overload of calls on Sergeant Milstein's phone. Captain Lombard offered his support to the team leading the missing persons investigation, as their unit specialises in kidnapping cases and operates from various stations.
- [66] During that time, Sergeant Milstein expressed his concerns regarding these apparent discrepancies. It was then determined that he should visit this area to conduct interviews with Ms. Smith and Mr. Appollis. This occurred on Sunday, February 25th.
- [67] During the interviews with Mr. Appollis and Ms. Smith, he was informed about the statements, the interactions with the Missing Persons team, and had noted concerns regarding their demeanour and overall conduct. This caused him to be concerned.
- [68] During the interview, Mr. Appollis conveyed that the two children, Joshlin and her older brother, were not attending school due to illness. However, when he probed Mr. Appollis about his relationship with Joshlin, Mr. Appollis became evasive and directed the question to Ms. Smith, who was outside at that moment.

- [69] He also confirmed that Ms. Smith returned home during the day to smoke Tik, and although he could not provide an explanation regarding when and how Joshlin disappeared, he stated that both he and Mr. Van Rhyn took turns watching Joshlin. Mr. Appollis also affirmed that he did not participate in the search and acknowledged the presence of Ms. Lombaard on that day.
- [70] Ms. Smith seemed annoyed and affirmed that Joshlin was left in the company of Mr. Appollis while smoking the Tik. Captain Lombard was taken aback by her reply to a question when Ms. Smith stated, and I quote in Afrikaans: “Meneer, my kind is nie meer in Saldanha nie.” Ek moet voortgaan met my lewe, ek het nog twee kinders. Sir, my child is no longer in Saldanha. I must move forward with my life, as I have two other children to care for. When he enquired about how she knew that Joshlin was no longer in Saldanha, she replied, the child is gone. My kind is gone.
- [71] He described her as emotionless and cold, detached from the investigation prior to the efforts to clarify the issues. He then sought to obtain an additional statement from her, enhancing the account provided during the early hours of the 20th to Kobese and Gongotha on the night of the 19th. The response was even more surprising; she had no time to provide another statement as she needed to go to the Spur with Mr. Appollis.
- [72] This was not the only surprising issue; what he found strange was that here we have a mother who is not enquiring about updates on the investigation or any new information available. Instead, she stated that Joshlin made her famous.

Mickeyla Daniels is a sister of Ms Smith

- [73] She is a police official in the Northern Cape; the two of them spoke on 26 February 2024, which is the day after Captain Lombard's interview where the responses were provided as I described above.

- [74] Ms. Smith told her sister that Joshlin was still nearby and that someone was looking to sell her child, mentioning that she is in the informal settlement, but it is currently too heated in Saldanha. When Ms. Smith sought to enquire further, her response was that she is aware Ms. Daniels is a police official and that she is now posing the same questions that the police have already asked, so she will not provide an answer.
- [75] Regarding the inquiry about Joshlin's absence from school on 19 February, it was explained that her school uniform was dirty and that Ms. Smith lacked the funds for washing powder. I have previously mentioned the 11 o'clock issue in Mr. Appollis' initial statement.
- [76] On 22 February, prior to this interview, efforts were made to secure a statement from Mr Van Rhyn. It may seem peculiar that Captain Lombard only communicated with Mr Appollis and Ms Smith, given that Mr Van Rhyn had not yet provided a statement.
- [77] The communication from Ms. Smith to Ms. Daniels regarding the sale of Joshlin is significant and noteworthy due to the events that transpired on 22 February at Mr. Van Rhyn's residence. Upon Sergeant Milstein's arrival, Mr. Van Rhyn engaged with community members, during which he began to speculate on the potential sale of Joshlin.
- [78] Sergeant Milstein, however, did not take a statement from Mr. Van Rhyn on that day, as he believed Mr. Van Rhyn was under the influence of drugs and preferred not to pursue it further at that time. On 29 February, Mr. Van Rhyn made a statement to Detective Sergeant Refilwe Sekhobe, in which he denied any responsibility for the events that occurred on the 19th.

- [79] Captain Lombard encountered Ms. Smith at the police station on March 2, 2024, during the visit of the then Minister of Police. She was appropriately attired in a dark green dress and her hair was evidently styled. She responded that Joshlin had made her prominent after Captain Lombard made comments about her appearance. The statement ...[indistinct] and the same lines were addressed to Colonel Sebola at the time.
- [80] This remark also reached Ms. Ganeef, the alleged TikTok influencer. I will now shift my focus to the events that took place in March, as they are connected to Ms. Ganeef and the video.
- [81] The day following the visit from the then Minister, on 3 March 2024, a prayer event took place here in Saldanha. Ms. Ganeef purchased clothing for Ms. Smith. A boy band called the Temple Boys was organised by a politician, who also performed at the event.
- [82] Ms. Ganeef submitted a video in which Ms. Smith was joyfully dancing, clearly in high spirits. Notably, Mr. Nico Coetzee was in attendance at the event. At one point, Ms. Smith was invited onto the stage to receive blessings, and he recognised her as his friend, whose child is now missing. He recalled what she had shared with him in August of the previous year.
- [83] He felt troubled by this and tried to communicate it to his wife. She, however, reported that they were simple people; this is too big for them, and they should not get involved. In consideration of his spouse, he took a moment to ponder the situation; however, it troubled him greatly, prompting him to seek the earliest chance to disclose what he understood. The following Wednesday, oblivious to the occurrences that transpired between 4 and 5 March, which was now the 6th, marked his first day working in Jacobsbaai for the Kruger's.

- [84] I will pause to note that he also worked for a person by the name of Jacque Louis Van Zyl who is the neighbour right from on the open plot to the Kruger's. He happens to be the control prosecutor at Vredenburg.
- [85] On the morning of the 6th, the issue was reported to the Krugers first, who subsequently contacted Mr. Van Zyl. Mr. Van Zyl was already informed about the events from the previous day and that Ms. Smith was involved in the offences.
- [86] As we gather at the event on the 3rd and reflect on Ms. Ganeef's contributions and Ms. Smith's dancing, let us take a moment to revisit the video call from 20 February, during which Ms. Smith was at Kelly Zeegers' residence.
- [87] I would like to address the irritation expressed by Ms. Smith earlier regarding the enquiries about Mr. Appollis. At that time, Ms. Smith also informed Ms. Ganeef that the police needed to carry out their duties and should cease the search for Joshlin. The terminology employed at that time by Ms. Ganeef did not refer to Joshlin by her name; instead, she was referred to as "the child." I bring this up here, as the next topic I will address is the admission of the statements made by Mr. Appollis and Mr. Van Rhyn. It became evident in those interviews that Joshlin was not referred to by her name, but rather as "die kind"; the child.
- [88] Let us take a moment to revisit the trial-within-a-trial. I will keep this brief, and the reason for that will soon become clear.
- [89] The day following the visit from the Minister and the Premier, a significant search took place in this area, where the venue we are currently in, which I was previously unaware of before our selection, transformed into an operations centre. Police officials from across the province, representing various detective branches and sections of SAPS, along with community members, organisations, and interested individuals, were conducting a search in the broader area of Saldanha Bay towards Jacobs Bay. The operation included the dunes and

beaches, with the navy also participating, resulting in a significant operational centre.

- [90] What nobody knew was that Captain Lombard and his team were in the field that day, while their direct commanding officer, Brigadier Hanane, took up position at the Sea Border offices, sitting in the FCS Commander's office. They had already decided that they needed to reinterview the three individuals again: Mr Appollis, Mr Van Rhyn, and Ms Smith.
- [91] Considering all the discrepancies and the red flags previously mentioned, it was the behaviour of the individuals during this time that stood out. After completing their work on the search, Mr. Appollis, Mr. Van Rhyn, and Ms. Smith were brought to the offices of the Sea Border police, where the FCS offices are also located, by different individuals.
- [92] Interviews were conducted and various police officers testified as to what had happened but more particularly, Captain Lombard, Sergeant Fortuin, Sergeant Johnson as it was alleged that undue influence was exerted on Mr Appollis and Mr Van Rhyn and they were viciously tortured - some demonstrations became laughable to say the least.
- [93] The evidence presented and the questions posed to the witnesses were completely dissimilar. Additionally, I was informed that the admissions made in those statements were derived from the police, who instructed them on what to say. The evidence presented for the defence on that matter was so lacking in credibility that it failed to convince anyone. It's hardly surprising they chose not to return and testify, as the prosecutors thoroughly dismantled their evidence, to put it in more familiar terms.
- [94] Conversely, there was no justification for dismissing the police evidence provided by the officials I previously referenced. In addition to the medical examinations

and the accounts given to the doctors by Mr. Appollis and Mr. Van Rhyn regarding the injuries they sustained, I was fortunate that a process was implemented in which these statements were captured on video.

- [95] It not only helped someone to contribute, as it allows for observation of what is before you; one can perceive the demeanour of the deponent, observe the conduct of the police official taking the statement, and witness the scene. The conclusion is not yet reached.

Let me turn to Mr Appollis briefly:

- [96] He carefully examined each sentence, either affirming or denying it, with input from both Mr. Appollis's counsel and myself. As we are aware, what is affirmed in Ms. Smith's absence is often retracted upon her return to the courtroom. To exacerbate the situation, I have been informed that the content of those statements originated from the police's knowledge. However, Mr. Appollis informed me that he fabricated the story while seated before Colonel Pretorius, which led me to enquire about the origin of his newfound abilities, as there is information in those statements that the police were unaware of.
- [97] Similarly, Mr. Van Rhyn's situation unfolded, and I have expressed my concerns to Captain Seekoei regarding the fact that not everything he stated was recorded verbatim. The audio from the video recording clearly conveys his statements, and many of those issues went unchallenged.
- [98] It was asserted that he was either asleep or that his brain was not functioning when he yawned, but when he took the stand, the narrative changed. At that moment, he was fully alert. At first, he was whirled around an axle like a top, then, when it became clear that this was unfeasible, he simply swung or rocked like a boat.

- [99] We asked him to illustrate, it was clearly impossible. At first, it was ambiguous what kind of pole, pipe, or structure was employed to spin him around. Eventually, it was identified as a crutch. On that day, a gentleman with a crutch was present in court. It's best to say as little as possible about it.
- [100] I found the credibility to be severely lacking, however, the State's evidence was of a nature that I deemed credible and reliable, leading to the admission of the statements.
- [101] Mr. Appollis and Mr. Van Rhyn provided their statements; however, prior to their departure that evening or in the early hours of the 5th, an encounter occurred between Mr. Appollis and Ms. Smith.
- [102] Ms. Smith did not provide a statement at that time. At a later stage, she provided a statement that subsequently became the warning statement. At some point, both of them informed the police that they should enquire with Ms. Smith. Upon hearing what they had said, she erupted in anger, demanding to know from Mr. Appollis how he could betray her, given her love for him.
- [103] I will discuss Mr. Coetzee and Ms. Lombaard in greater detail shortly. However, before I do, it is essential to consider the warning statement from Ms. Smith, which was submitted as Exhibit QQ. This statement was written in her own hand.
- [104] Upon examining the timeline provided, it is clear that she arrived home at 11:30, borrowed the money, purchased Tik, returned home, and was back at Carlyn Zeegers' residence by 12:30. She finally returned home at 16:45, which is a quarter to five.
- [105] I compare that to the earlier statement I referenced. She realised that Joshlin was not at home by five o'clock at the latest. After that, she, Mr. Appollis, and Mr. Van Rhyn embarked on their searches for petrol and proceeded to do Tik,

without any concern. That pertains to the version, to the extent that it represents Ms. Smith.

Let me begin with Mr. Coetzee:

[106] He is the sole witness regarding the events that occurred on that August morning in 2023. Ms Lombaard is a sole witness regarding her account of the white Polo, and I recognise that the narrative presented by Mr Appollis and Mr Van Rhyn concerning the delivery of Joshlin contrasts with hers.

[107] Therefore, in both instances, I would need to implement a cautionary rule. I need to locate some assurance of dependability for their evidence. When a Court considers this, you may also take into account the demeanour of the witness.

[108] Mr. Coetzee left a positive impression through the way he delivered his evidence. He lacks any reason to involve himself in this situation and engage with the case. When he reported to the Kruger's and Van Zyl, he was not aware of the arrest.

[109] Where does he obtain the R20000 from, as it was never included in any of the previous discussions and was not available in the public domain either? Even considering the probabilities, his evidence is favoured; more importantly, there is nothing to contradict Mr. Coetzee's testimony. I will address the instances in which inferences can be drawn from the silence of the accused individuals.

[110] In this situation, an answer is required, as he may be not just an evangelist but also a prophet, having knowledge of the number. He claims that Ms. Smith informed him of it, which remains unchallenged; although it was questioned during cross-examination, no additional evidence was presented. Furthermore, this claim is bolstered by the circumstantial evidence surrounding the case.

[111] Ms. Lombaard stands out as she is not only a sole witness regarding the commission of the crime, as she recounts, but she also plays a role as a participant. I must regard her as a sole witness, adhering to the cautionary rule, and approach her as a participant in this matter.

[112] I must also consider that she provided varying accounts as time progressed. On the 20th, when Constable Sekhobe, then a constable, spoke to her, she provided one version of events. On the 15th of March, she provided a statement to Captain Cilliers, which was referred to as a confession. Indeed, she implicated herself; however, that did not constitute a complete disclosure.

[113] She then appears in court as the accused, with legal representation. During that period, the legal representative also acts on behalf of Mr. Appollis. She wishes to be honest, he pulls away, they assign a new legal representative for her, Adv Van Tonder, following which the discussion occurs.

[114] A statement is subsequently prepared following numerous consultations, reviewed with her legal representative, and this becomes the so-called 204 statement, leading to further disclosure. There are three distinct statements; whether they represent three different versions is a separate matter. Then she enters the courtroom and faces a challenging situation.

[115] From the very beginning, she was not the ideal witness. Just because she may have been dishonest at some point does not mean I should dismiss everything she says. It is a common notion that failing to address a lie in one area does not imply that everything else she states is untrue.

[116] The test involves examining credibility while also depending on it. In applying the cautionary rule, there are no rigid or false guidelines; it becomes a matter of common sense. As I mentioned at the beginning, I will not be quoting all the

authorities, but I have considered them in my analysis. I have a clear understanding of how to approach this, and I will proceed accordingly.

[117] In my view, the approach should involve examining whether there is independent corroboration for certain aspects of her evidence, if not the entirety, in order to establish a warranty of reliability.

[118] I requested the prosecutors to provide me with a mind map while preparing their heads of argument. At this point, I would like to clarify that my examination of her evidence and the mind map will also inform my decision, particularly regarding Ms. Smith's application for discharge. This is significant because Mr. Van Rhyn's application was ineffective, especially since I had previously accepted his statement, which included self-incriminating admissions.

[119] I will not address the reasons for the 174 individually; instead, let us proceed to that point. During the discussion, we addressed the points that I had mentioned I would clarify. On the 18th of February, there will be a discussion at the house. There she is, supported by Mr. Appollis in his statement; that is the plan.

[120] The amount of money is supported by the testimonies of Mr. Appollis and Mr. Van Rhyn, as well as by Mr. Coetzee.

[121] The argument that took place on that day, as confirmed by Mr. Appollis to Captain Lombard and Ms. Tshosa, clearly positions her in that context.

[122] Subsequently, on the 19th, her presence was noted, along with Mr. Appollis and Mr. Van Rhyn, the microwave incident, and the necessity of collecting the money later, as well as the detail that they had smoked a quarter of Mandrax. In Colonel Morris's testimony, Mr. Van Rhyn affirms the existence of the social media video that was created.

[123] The visit to her house on the night of the 19th, during which Ayanda became upset, is corroborated by Gongotha and Kobese. Completely distinct from her, she noted that Joshlin had been sold. Ms. Smith, she mentioned, spoke to her on the 23rd. There is no additional evidence regarding this matter, it was Mr. Van Rhyn who initially brought up the issue of her discussing the sangoma at a different time.

[124] I can identify several issues, and this list is not comprehensive, as my perspective is to approach it from a different angle. We discussed the elements and what the State must demonstrate regarding the human trafficking charge.

[125] The distinction among Ms Lombaard, Mr Van Rhyn, and Mr Appollis pertains to the resources available to them. She confirms, and they support her on the plan, at least Mr. Appollis supports her on the plan, but both Mr. Appollis and Mr. Van Rhyn discuss the execution of the plan to dispose of Joshlin like a commodity on the 19th. According to her, that was the plan on the 18th. It is a well-established fact that Joshlin has gone missing.

[126] I reviewed everything thoroughly, and now I will focus on the circumstantial evidence, the behaviour of the parties involved, and the absence of any evidence presented to the Court for the defence.

[127] When analysing the evidence presented by Ms. Lombaard at the conclusion of the State's case, it is important to note that no credibility findings have been established, nor is there evidence of corroboration. The statements made by Mr. Appollis and Mr. Van Rhyn were not admissible against Ms. Smith, although they were admissible against themselves.

[128] There is evidence on record, and if it supports the State's evidence regarding Ms. Smith, you can rely on the strength of the State's case based on that evidence.

This is why I refuse to proceed, as there is evidence before the Court that could lead a reasonable Court to convict.

[129] The subsequent findings pertain to the witnesses involved. All of the evidence was accepted, thus becoming established facts.

[130] Regarding Ms. Lombaard, I find ample corroboration for her liability from both other evidence and circumstantial evidence, particularly in the discussion surrounding the plan to turn Joshlin into a commodity for sale. It is a fact that she went missing.

[131] She stated that all three of the now accused were involved in this act alongside her, and this is corroborated by Mr. Appollis and Mr. Van Rhyne. They support her evidence in that respect, beyond measure.

[132] The evidence, when combined with Mr. Coetzee's testimony, alongside the various other elements of circumstantial evidence, may appear insignificant when considered in isolation. However, when evaluating circumstantial evidence, it is essential to assess it as a whole. Each of these seemingly minor details, as illustrated by Ms. Swanepoel's case, contributes to completing the overall picture.

[133] It can also be viewed as the small tiles in a mosaic from which you derive conclusions. However, as previously mentioned, reported cases can resemble a ball of feathers that turns into a millstone around someone's neck, burdening them. Therefore, let us examine the circumstantial evidence.

[134] The truth is, Joshlin is a baby that the Andrews wish to adopt. A relationship was established between the two families. The parents do not wish to agree. On 18 February 2024, Mr. Appollis reported that Ms. Smith informed him the reason for selling Joshlin was due to Ms. Andrews, who is unwilling to cease her attempts to

adopt Joshlin. Circumstantial evidence in that context clarifies that previously vague detail.

Addressing Ms. Andrews:

[135] Ms. Andrews outlines Ms. Smith's behaviour, drawing from her familiarity with her, and provides insight into how Ms. Smith has acted following Joshlin's disappearance, as we then address her conduct.

[136] She is unclear about the reasons behind Joshlin's absence from school that day. The timeline is confusing; she arrives home at five or a quarter to five, and in one version, she knows that Joshlin was not home at lunchtime. If that's the case, why didn't she go look for the child?

[137] It seems more fitting to charge your phone rather than search for the child. Then you inform everyone that the child is the reason for your fame. On 3 March, you can enjoy jive and dance, along with many other activities. This behaviour does not reflect that of someone who is oblivious to what occurred with the child. They go to sleep that night; I want to mention the stepfather and mother. The following evening, you sleep soundly at Kelly Zeegers' house. And thus it continues.

[138] In a similar vein, Mr. Appollis was entrusted with Joslin's care, yet there were also inconsistent accounts, concealing Mr. Van Rhyn's presence and failing to mention him at all; he did not engage in the search. Ms. Smith has advised him to express some emotion. It is undisputed; is it essential?

[139] The actions of Mr. Appollis and Ms. Smith do not reflect those of a concerned parent. To my mind, the only conclusion is that you were aware. This stands as support in itself, Ms. Lombaard, as conveyed by Mr. Appollis. The case is not concluded, as I have just summarised the proceedings that were presented before the Court. At the conclusion of the State's case, I verified with all three

individuals, and they opted to remain silent. You possess the right to remain silent.

[140] The Constitutional Court in *S v Boesak*, highlighted that this right is not absolute. There are instances when the evidence demands a response. While you may still choose to exercise your right, it carries certain risks, as the Court may draw inferences from your silence.

[141] The conclusion I reach is, why not come forward and respond? You have listened to the evidence; why not come forward and assert that they are not telling the truth? Your behaviour has been consistent since the very beginning, not just during the trial, but from the 19th of February last year. There seems to be a lack of genuine interest in participating in the search, as you have not taken action to do so.

[142] I am able to determine the facts regarding what occurred with Joshlin. Was she brought to the white Polo? Was she sent to Makalina's house by Mr. Appollis and Mr. Van Rhyn? The issue at hand is that.

[143] Mr. Appollis and Mr. Van Rhyn, due to the varying accounts provided by Ms. Lombaard, I am unable to ascertain a guarantee of reliability for the white polo. Therefore, that does not constitute proof beyond a reasonable doubt in that regard, due to the cautionary rule. Is it essential to uncover the method, the means by which Joshlin was delivered?

[144] I have reached a conclusion regarding the interpretation of the law, however, I assert that it is not essential. It can be inferred from the existing plan and purpose to commodify her and hand her over, which is a matter of fact. Does that meet the criteria of the charge?

[145] Based on the evidence presented, I have concluded that Joshlin was indeed exchanged. Her freedom of movement and liberty were indeed inhibited, which are the primary elements of the act of kidnapping. Kidnapping is referenced as one of the methods in subsection (g) of section 4(1), and the evidence, drawn from various sources, indicates that there were payments or at least promises of payments.

[146] Furthermore, upon examining the overriding subsection (j) of the Act, it addresses the purpose that encompasses all forms of slavery or practices akin to slavery. The definition section of the Act characterises slavery as the act of reducing an individual, by any means, to a state of submission to the control of another individual. By treating a human being, in this instance a child, as a commodity that can be sold, it aligns with that definition, whether it be that person, another individual, or the owner of that person.

[147] I have already provided my observations regarding the Act as it pertains to kidnapping, specifically in assessing whether it falls under subsection 4 or 4(1), contravention. It is clear that the act of depriving Joshlin of her freedom of movement and liberty, to the extent that her whereabouts remain unknown, is unlawful. This will fulfil the requirements of the offence outlined in Count 2.

[148] Before I continue with my pronouncement, I must also address the indemnity of Ms. Lombaard. I have chosen to refrain from addressing that application or my assessment of it at this time. It is evident from my previous statements that there will be another phase in this case, however, it remains uncertain what additional evidence may be introduced at that time, which could impact the decision.

[149] Additionally, should I choose to act on that question after reviewing all the evidence presented, I may contemplate allowing Ms. Lombaard's legal representative to speak to me regarding the matter before a final decision is reached. However, the main reason is that I anticipate a chance that evidence

could still be presented in the next phase of this case, which may influence that decision.

[150] For the reasons I have outlined, I believe the State has successfully demonstrated the guilt of Mr. Appollis, Mr. Van Rhyn, and Ms. Smith regarding the main Count in count 1, as well as count 2. Therefore, the following order is issued.

[151] On Count 1: You are guilty of the contravention of section 4(1) of the act, read with the other legislation on trafficking in persons in relation to Joshlin Smith.

On Count 2: You are also convicted of kidnapping.

ERASMUS, ADJP
JUDGE OF THE HIGH COURT

Appearances

For The State: Z Swanepoel with A Heeramun
Instructed by: Director of Public Prosecutions

For The Accused: S Harmse, N Mkabhayi and R Sivnarain
Instructed by: Legal Aid South Africa