



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

CASE NO: CA79/19

In the matter between:

I[...] L[...] L[...]

Applicant

And

State

Respondent

Coram: REDDY J and WESSELS AJ

Previous Coram: Laubscher AJ and Mamana AJ

Heard: Reserved 19 March 2026 to a reallocated panel as constituted by the Judge President

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 23 April 2026 at 16h00.

Summary: Criminal law – Appeal against sentence – Assault with intent to do grievous bodily harm – Appellant a 40-year-old single mother and primary caregiver of two minor children – Appellant pleaded guilty – s 113 invoked and plea of not guilty entered – formal admissions in terms of ‘s 220 of the CPA’ made unequivocally admitting guilt, wrongly made under s 112(2) of the CPA – Procedural error by trial court not vitiating conviction – Magistrate imposing three years’ direct imprisonment – Whether sentence shockingly inappropriate – Magistrate failing to give adequate weight to appellant’s personal circumstances and interests of minor children – Sentence of direct imprisonment not justified where first offender pleads guilty, acts out of concern for child’s welfare, and is sole caregiver of dependent children – *S v Zinn* 1969 (2) SA 537 (A) applied – *S v M* 2007 (2) SACR 539 (CC) applied – Three years’ imprisonment suspended for four years on appropriate conditions substituted – Declaration of unfitness to possess firearm confirmed – Appeal against sentence upheld.

ORDER

On appeal from: The Magistrates’ Court for the district of Moses Kotane, held at Mankwe (Magistrate Makgala, presiding):

1. The appeal against sentence is upheld.
2. The sentence imposed by the magistrate is set aside and replaced with the following:
The accused is sentenced to three years’ imprisonment, which is suspended for a period of four years on condition that the accused is not convicted of assault with intent to do grievous bodily harm or any offence involving violence committed during the period of suspension.
3. The order declaring the accused unfit to possess a firearm is confirmed.

JUDGMENT

REDDY J (WESSELS AJ concurring)

Introduction

[1] This is an appeal against sentence. The appellant, Ms I[...] L[...] L [...], a 40-year-old woman, was convicted in the Magistrates' Court for the district of Moses Kotane (sitting at Mankwe) of assault with intent to do grievous bodily harm. She pleaded guilty to the charge. The trial court sentenced her to three years' direct imprisonment and declared her unfit to possess a firearm. The appellant applied for leave to appeal against sentence.

Proceedings in the trial court

[2] The appellant initially tendered a plea explanation in terms of s 112(2) of the Criminal Procedure Act 51 of 1977 (the CPA). The magistrate was not satisfied that the explanation disclosed an unequivocal admission of guilt, as it appeared to raise private defence as a ground of justification to exclude unlawfulness. Acting under s 113 of the CPA, he entered a plea of not guilty and directed the prosecutor to proceed with the prosecution.

[3] It would be remiss of this Court not to address a noticeable procedural irregularity in the trial court proceedings. To this end, once a magistrate invokes s 113 of the CPA and records a plea of not guilty, the civil equivalent of *litis contestatio* is reached. Simply put, the plea proceedings are considered closed. No provision in the CPA permits a legal representative to tender a further or 'amended' plea explanation at that stage.

[4] It follows that the proper procedural vehicle, after a s 113 of the CPA invocation, is for the defence to place unambiguous formal admissions before the court, in terms of s 220 of the CPA. Section 220 of the CPA provides that an accused or her legal adviser may, in criminal proceedings, admit any fact placed in issue, and that such admission shall be sufficient proof of that fact. The record, in effect, discloses that Ms Lengani made formal admissions on the appellant's behalf that she had not been acting in self-defence and that the complainant had posed no threat or harm to her and that the magistrate accepted those admissions as establishing the appellant's guilt. To describe that process as an 'amended plea explanation' is a mislabelling. It was, in substance, a s 220 of the CPA admission.

[5] The further effect of s 113 is that any admissions validly made by the accused during the s 112 proceedings, and not disturbed by the s 113 ruling, stand as proof of those facts.¹ As the Appellate Division confirmed in *S v Naidoo*,² the conversion of a plea under s 113 does not erase all prior admissions. Only those admissions directly affected by the reason for the s 113 intervention fall away. All remaining admissions serve as proof of the facts admitted. In the present case, any admissions made by the appellant during the initial s 112(2) proceedings that were unrelated to the self-defence issue therefore remained binding.

[6] In our view, the procedural irregularity does not, in the circumstances of this case, vitiate the conviction. The test whether an irregularity invalidates

¹ Section 113(1) of the CPA provides that "any allegation, other than an allegation [affected by the s 113 ruling], admitted by the accused up to the stage at which the court records a plea of not guilty, shall stand as proof in any court of such allegation."

² *S v Naidoo* (292/1987) [1988] ZASCA 156 (29 November 1988). See also *S v Nthama* (HC 12/2023) [2023] ZANWHC 202 at para 11–14 (confirming that where an accused's responses to questioning suggest a possible defence, a plea of not guilty must be entered under s 113 and the matter proceeds to trial).

criminal proceedings is whether a failure of justice resulted, or whether the accused was prejudiced.³ The appellant was legally represented throughout. Ms Lengani made the admissions freely and on the appellant's instructions. The admissions were clear and uncontested. The appellant was convicted on strength of the admissions and she does not now seek to resile from them. Her appeal is directed solely at sentence. No prejudice is discernible, and no failure of justice resulted.

Background facts

[7] The facts giving rise to the conviction are largely common cause. On 22 February 2019, the appellant went to Liyema Primary School in Tlhathaganyane. Her son, R[...], then nine years old, had returned home the previous day, crying, and told her that the complainant, Ms Mphuseng Onika Seputhukela, his teacher, had struck him. The appellant went to the school to speak to Ms Seputhukela about the matter. An altercation ensued, during which the appellant struck the complainant with a stick. The complainant sustained injuries, including a two-centimetre laceration to her head, soft-tissue injuries, and a fracture of her right hand. She continues to experience difficulties with her hand and has been advised that she may need to retire early from her teaching career.

[8] After conviction, the State called witnesses in aggravation of sentence. These included the complainant, Ms Seputhukela; Ms Neo Makhubalo, an educator at the school; and Ms Molebatsi Letswalo, who had become the appellant's son's educator after the complainant left the school. Their evidence painted a picture of a mother who, over a period of time, had engaged in

³ Section 309(3) of the CPA; *S v Ngubane* (30/83) [1985] ZASCA 41 (confirming that the test for irregularity is whether a failure of justice has in fact resulted).

disruptive behaviour at the school, often aggressively confronting educators. The appellant was, after the incident, barred from entering the school premises.

[9] In mitigation of sentence, Ms Lengani placed the appellant's personal circumstances before the court. The appellant was a single mother of two minor children, a 13 year old and a nine year old. She was unemployed and survived on casual employment, earning approximately R1 000 per month. She had no previous convictions. Ms Lengani urged the court to impose a suspended sentence, emphasising that the appellant had acted out of a genuine concern for her child, had shown remorse, and that a custodial sentence would be detrimental to her children.

The trial court's judgment on sentence

[10] The magistrate, in his judgment on sentence, noted that the offence was a serious one. He found that the appellant's conduct was not an isolated incident but part of a pattern of disruptive behaviour at the school. He considered that the complainant had suffered serious injuries, which had had a lasting impact on her ability to teach. He concluded that a custodial sentence was warranted to deter the appellant and others from taking the law into their own hands. On the same day, he granted leave to appeal and extended the appellant's bail.

Grounds of appeal

[11] The appeal against sentence is brought on the basis that the magistrate misdirected himself in imposing direct imprisonment. It is submitted that the sentence is shockingly inappropriate and that the magistrate failed to give sufficient weight to the appellant's personal circumstances, her status as a first offender, and the interests of her minor children.

An appellate court's sentencing discretion

[12] The principles governing sentencing are well established. It is trite that sentencing is pre-eminently a matter for the discretion of the trial court and that an appellate court should only alter a sentence if that discretion has not been judicially and properly exercised, namely where the sentence is vitiated by irregularity, misdirection or is disturbingly inappropriate.⁴

Analysis

[13] In *S v Zinn*⁵ the court reaffirmed that sentence must strike a balance among the crime, the offender, and society's interests. In *S v RO & Another*⁶ Heher JA described sentencing as a process of achieving the right balance, or proportionality, among the elements of the crime, the offender and the interests of society, noting that the process is inherently unscientific and allows reasonable people to reach different conclusions even on a proper exercise of the judicial function.

[14] In *S v Van Loggenberg*⁷ the court identified five important functions of punishment: to act as a general deterrent to members of the community; to act as a specific deterrent to the individual offender; to enable the possibility of correction unless clearly unlikely; to protect society from those who harm it; and to serve society's desire for retribution by addressing its outrage at serious wrongdoing.

[15] Undoubtedly, the trial court was correct in regarding this as a serious offence. The assault of educator by a parent is a matter of grave concern. The courts have repeatedly emphasised that violence will not be tolerated, and our

⁴ *S v Rabie* 1975 (4) SA 855 (A) at 862.

⁵ 1969 (2) SA 537 (A) at 540G–H.

⁶ 2010 (2) SACR 248 (SCA) at para 30.

⁷ 2012 (1) SACR 462 (GSJ) at para 6.

law is replete with authority that violent crime must be met with sentences that serve as a deterrent.

[16] Notwithstanding the seriousness of the crime, it was peremptory for the trial court to give due weight to the appellant's personal circumstances. The following factors deserve particular emphasis. The appellant was a first offender who pleaded guilty, thereby demonstrating remorse. She was the primary caregiver of two minor children. Her conduct, while unacceptable, was predicated on her concern for her child's welfare. These are factors that ordinarily weigh in favour of a sentence other than direct imprisonment.

[17] The State called witnesses who testified about the appellant's prior conduct at the school. This evidence was relevant to show that the incident was not an isolated outburst. It is significant, however, that the appellant was never charged in respect of her previous conduct. The fact that she had previously engaged in disruptive behaviour is a factor that must be considered as part of the sentencing triad, but it should not be given undue weight in sentencing for the offence for which she was convicted.

[18] In *S v M*⁸ the Constitutional Court held that a sentencing court must carefully consider the impact of imprisonment on dependent children when the offender is a primary caregiver. The court affirmed that children are not mere appendages to the offender; they have their own rights that must be respected. A sentencing court must therefore consider the effect of the proposed sentence on dependent children and must ensure that it does not unduly prejudice them.

⁸ 2007 (2) SACR 539 (CC) at para 25.

[19] In the present case, the magistrate acknowledged that the appellant was a single mother but did not engage with the impact of direct imprisonment on her children. The evidence established that she was their sole caregiver. If she were imprisoned, her children would be left without parental care. That is a factor that should have weighed more heavily in the sentencing calculus.

[20] The appellant pleaded guilty and, after the initial plea was rejected, made formal admissions under s 220 of the CPA that plainly acknowledged her guilt. This demonstrated a willingness to accept responsibility for her actions. While the State argued that the appellant showed no remorse because she did not personally apologise to the complainant, the fact of her formal admissions, coupled with her legal representative's statement that she was sorry for what she had done, suggests genuine remorse.

[21] The sentence of three years' direct imprisonment imposed by the magistrate was, in our view, too harsh. It failed to give adequate weight to the appellant's personal circumstances and to the interests of her children. The magistrate appears to have focused primarily on the seriousness of the offence and the need for deterrence, without properly balancing those considerations against the mitigating factors.

[22] That is not to say that a custodial sentence would never be appropriate in such a case. Assault on educators is a serious matter, and parents must be discouraged from resorting to violence in dealing with school-related issues. However, in the circumstances of this case, the imposition of direct imprisonment is not justified.

[23] In our view, a suspended sentence of imprisonment is an appropriate sanction. It serves the purpose of deterrence by imposing a custodial term that

will be activated if the appellant reoffends. It also reflects the seriousness of the offence while taking account of the appellant's personal circumstances and the interests of her children. The three-year term of imprisonment imposed by the magistrate is proportionate to the gravity of the offence, but the sentence should be suspended on appropriate conditions rather than being immediately effective.

[24] The magistrate also declared the appellant unfit to possess a firearm. That order was not challenged on appeal and is appropriate given the violent nature of the offence. It will accordingly stand.

Order

[25] The following order is made:

1. The appeal against sentence is upheld.
2. The sentence imposed by the magistrate is set aside and replaced with the following:
'The accused is sentenced to three years' imprisonment, which is suspended for a period of four years on condition that the accused is not convicted of assault with intent to do grievous bodily harm or any offence involving violence committed during the period of suspension.'
3. The order declaring the appellant unfit to possess a firearm is confirmed.

A REDDY

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

I agree.

**M WESSELS
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

APPEARANCES:

For the appellant: Adv O.Y Dibetso-Bodibe

Instructed by: Legal Aid South Africa, Mafikeng

For the respondent: Adv Chulu

Instructed by: Director of Public Prosecutions, North West Province