

SOUTH AFRICA / JUDGMENT

Klaasen v S (CA&R 284/2013)

[2015] ZAE CGHC 31 (15 April 2015)

[2015] ZAE CGHC 31**COURT**

Eastern Cape High Court, Grahamstown

BEFORE

G Goosen, JW Eksteen

CASE / FILE NUMBER

CA&R 284/2013

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION, GRAHAMSTOWN

CASE NO: CA&R 284/2013

Date Heard: 25 February 2015

Date Delivered: 15 April 2015

In the matter between

ANDILE ERNEST KLAASEN.....Appellant

And

THE STATE.....Respondent

JUDGMENT

GOOSEN, J.

- [1] The appellant was employed as a language practitioner, i.e. a court interpreter, at the Graaff Reinet district court. He was charged with and convicted of contravening section 4
- (1) (a) (i) of the Prevention of Corrupt Activities Act, 12 of 2004 and of attempting to defeat or obstruct the course of justice. On the first count he was sentenced to imprisonment for 10 years of which five years was conditionally suspended. On the second count he was sentenced to imprisonment for 3 years. The magistrate ordered the sentences to run concurrently. The appellant was granted leave to appeal against his conviction and, on petition to this court, was granted leave to appeal against his sentences.

- [2] The essential allegations against the appellant at trial were that he had solicited payment of a sum of money from the complainant, who was charged with culpable homicide in the regional court, in exchange for obtaining the original charge sheet in the case and thereby ensuring that the case against the complainant could not proceed. Much of the evidence presented by the complainant at trial was ultimately common cause, although there were disputes in relation to certain critical aspects of the evidence.
- [3] It was common cause that the complainant, Makamba was charged in the Regional Court at Graaff Reinet on a charge of culpable homicide arising from a motor vehicle collision in which he had been involved. It was also common cause, or at least not in dispute at trial, that the complainant had come into possession of the original charge sheet in the case and that that he had, at the

conclusion

of his trial, made a report to the court manager at the regional court in which he alleged that the appellant had been paid an amount of R4000 to “make his case disappear” and that the appellant had given him the original charge sheet. It was also common cause that pursuant to the complaint made by the complainant to the court manager, that the matter was referred to the police for investigation and that the police obtained from the complainant the original charge sheet.

- [4] The complainant’s evidence was that on an occasion when he had appeared in the district court at Graaff Reinet the accused had approached him outside of the court. The complainant said that the appellant introduced himself and told him that he was aware of the case against the complainant, that it was a very serious case and that he could, for an amount of R4000, make the case against

him disappear. The complainant admitted that he was very anxious about the case, that he had concerns about his family and what the effect would be if he was convicted. He was therefore amenable to obtain the appellant’s assistance. He told the appellant that he did not have the money available and as a result they exchanged telephone numbers.

- [5] Sometime after this meeting when he was travelling to Graaff Reinet he received a telephone call from the appellant and they agreed to meet at a garage in the town. On that occasion the complainant gave the appellant an amount of R2000. He explained that he was on his way to Cape Town where he would borrow the balance and pay it to the appellant when he returned. He returned in the course of the following week for an appearance in court. He telephoned the appellant when he was approaching the town and they agreed to meet again at the garage. He paid the appellant a further amount of R2000. The appellant, who was driving a blue motor vehicle,

it took out a document from under the seat of his car and showed it to the complainant. The appellant explained to the complainant that he could not give the document to him at that stage because the complainant would have to appear in court on that day and there was a danger that he would be searched by security on his entrance or exit. It was agreed that they would meet later in the day.

- [6] The complainant appeared in court and his case was again postponed to a further trial date. When he left court he telephoned the appellant and they agreed to meet outside of town at a hiking spot. The appellant took the same document out of the boot of his car and gave it to the complainant after tearing it in half. He told the complainant to destroy the document. The complainant

then left and returned to his home in Idutywa. He was required to appear in court again which he did. His case was again postponed to a further date. The complainant who was by now concerned about why the case against him had not “disappeared” attempted to contact the appellant. The appellant, however, was not taking calls and he was unable to raise him.

- [7] The case against the complainant was postponed on various occasions and was ultimately finalised when he pleaded guilty to the charges and a sentence was imposed. According to the complainant, he had made several attempts to get hold of the appellant, but to no avail. He was dissatisfied with what had taken place and he wanted the return of the money that he had paid to the appellant. Eventually he approached security guards at the court, who in turn referred him to the court manager. It was then that he formally laid a complaint with the court manager.
- [8] The appellant’s version was that he was working as an interpreter in the district court. On a certain day when he was performing his duties he had gone out of the court to call certain witnesses. The complainant was seated on a bench outside the court and he spoke to him. The complainant said to him that certain Kula had sent him to get certain documents from the appellant. The appellant was nonplussed by this since he had no documents to give to a Kula. He could not initially get hold of this Kula initially to enquire what this was about. According to the appellant Kula was known to him as an interpreter who did interpretation services at various courts across the region. When he eventually spoke to Kula, Kula advised him that in the event that the complainant should lay any complaint against him he, the appellant, should say that he had sold him a gearbox for a vehicle. The appellant denied that he had solicited any money from the complainant. He denied that he had provided the appellant with the original charge sheet in the case against him and furthermore denied that he had any corrupt dealings with the complainant.
- [9] The magistrate dealt with the mutually destructive versions of the prosecution and defence witnesses in relation to the critical issues and, after having warned himself that the complainant was a single witness and that he was an accomplice witness, the magistrate accepted the evidence of the complainant and rejected that of the appellant.

[10] It was submitted on appeal that the magistrate had erred in rejecting the version of the appellant. It was argued that the complainant was a single witness and that the magistrate had erred in finding corroboration for the complainant's version from facts that were not in dispute. It was submitted that the magistrate ought not to have found that the complainant's evidence was reliable in the light of certain contradictions in his evidence and between his evidence and the content of statements made to the police.

[11] It is appropriate to deal with the latter aspect first. The appellant relied on two "material contradictions" between the complainant's evidence and what was contained in his police statements. The first was that in evidence in chief he testified that he had first made contact with the appellant outside the court premises and that it was on that occasion that the offer was made to make his case disappear. In one of three statements made to the police he stated that he had first had contact with the

appellant when he received a telephone call from him. When challenged with this he explained that he had first met the appellant at the court and that they had had a conversation and had exchanged telephone numbers on that occasion. He later received a telephone

call when the appellant reminded him of their conversation. On a careful reading of the statement there is in fact no contradiction

between the version presented in the complainant's evidence in chief and that contained the police statement. Although his

explanation was criticised as being "unconvincing" it is in fact not so, and the magistrate, in my view, committed no error in disregarding the alleged discrepancy.

[12] The second aspect, in respect of which the magistrate was criticised, concerned the complainant's evidence to the effect that on the day that he met the appellant and paid to him the R2000 balance the appellant had removed a document from the boot of his car and torn it before handing it over to the complainant. That document was the original charge sheet in the case in which the complainant was appearing at court. It was argued that this version contradicted the content of the complainant's statement to the police in which it is recorded that before he went to court on the day in question the appellant had taken a document "from underneath the car seat and started tearing it apart" and handed it over to him.

[13] Even if one accepts that there is a contradiction, the contradiction was adequately explained by the complainant on the basis that the statement does not correctly reflect what occurred and what was explained to the policeman taking the statement. In his judgment, the magistrate dealt at some length with the argument in relation to the alleged discrepancies. The magistrate referred to various authorities relating to the proper approach to evaluating discrepancies between the evidence given and the content of a police statement. It was not suggested in argument that the magistrate had misdirected himself in this regard or that the magistrate had erred in the application of the appropriate principles to the circumstances of

this case. In my view, rightly so. The trial court's judgment reflects a very careful consideration of the alleged discrepancies, including the apparent contradictions between the police officials who took the three statements made by the complainant. The magistrate accepted the evidence of the complaint and accepted the explanations given by the police witnesses. In my view there is no basis to find that the magistrate erred or misdirected himself in this regard.

- [14] Turning to the magistrate's reliance on the undisputed facts to "corroborate" the version of the complainant, it is indeed so that the magistrate refers to these facts as corroborating the version of the complainant. What is however clear from the judgment is that the magistrate did not find that the undisputed facts provide corroboration for the complainant's

allegation that the appellant had solicited payment of an amount of money from the complainant in order to "make his case go away". In referring to the undisputed facts as corroborating the version, the magistrate did no more than find that the complainant's version is consistent with the undisputed evidence. In relation to the critical issue, namely the appellant's offer to make the case go away in exchange for the payment of a sum of money, the magistrate's finding was based upon an assessment of the credibility and reliability of the complainant as a witness. The magistrate was impressed with the complainant as a witness and in particular was impressed by his candour, notwithstanding his own role in the corrupt activities to which he was party.

- [15] In essence, as already indicated, the trial court was faced with two mutually destructive versions. It was accepted on behalf of the appellant that the court had correctly had regard to the holistic approach to determining the guilt of an accused as is set out in *S v Chabalala* 2003 (1) SACR 134 (SCA). It was however submitted that the court had erred in not finding that the balance of the evidence does not weigh so heavily in favour of the state as to exclude any reasonable doubt about the appellants guilt. That "error" was essentially that the trial court did not come to the conclusion that the appellant was not guilty.

- [16] The criticism is unfounded. The trial court very carefully weighed all of the evidence which pointed towards the guilt of the accused against that which pointed to his innocence and weighed the probabilities and improbabilities on both sides of the equation. In my view, the magistrate's findings in relation to the probabilities cannot be faulted. It is indeed highly improbable that that the complainant who had come into possession of the original charge sheet in the case against him would falsely implicate the appellant if, as the appellant would have it, the corrupt dealings were between the complainant and Kula, the person who had

apparently placed the complainant in contact with the appellant. It is also highly improbable that the complainant would, over a protracted period of time, continue to make telephonic contact with the appellant if, as the appellant would have it, all that the complainant was seeking to do was to enquire about the delivery of a parcel to him by Kula. In my view the magistrate quite correctly rejected the version presented by the defence as so improbable as to be false beyond a reasonable doubt. It follows that I am satisfied that the trial court was correct in finding that the state had succeeded in proving its case against the appellant beyond a reasonable doubt. The

appeal against conviction therefore cannot succeed.

[17] I turn now to deal with sentence. As already indicated the appellant was sentenced to a period of 10 years in respect of the corruption charge and 3 years in respect of the charge relating to an attempt to defeat or obstruct the course of justice. The effective sentence was imprisonment for 5 years.

[18] It was submitted on behalf of the appellant that the sentence was unduly harsh. Reference was made several cases also involving corrupt activities where sentences of less than an effective period of five years imprisonment were handed down. The

cases referred to provide no more than a general guide to what is considered to be an appropriate sentence. In each instance the trial court took into account the particular facts and circumstances in which the offences were committed and, in the exercise of its discretion, imposed what it regarded as an appropriate sentence. In illustration it is necessary only to deal with a few of the cases referred to by appellant's counsel.

[19] In *S v Mahlangu and another* 2011 (2) SACR 164 (SCA) two police officers had approached a person who was facing a criminal charge, and suggested that he pay them a sum of R600 in order for them to withdraw the case. They were convicted of an offence under the now-repealed Corruption Act 94 of 1992 and were sentenced to 6 years' imprisonment of which 2 years were suspended. The appeal court confirmed the sentence, noting that corruption is a very serious offence especially when committed by police officers.

[20] In *S v New Year* 1995 (1) SACR 626 (A) the investigating officer in a case of dealing in drugs against three members of the same family approached another member of the family and offered to have the case withdrawn in exchange for four tyres. He was sentenced on appeal to 4 years' imprisonment of which 2 years were suspended.

[21] In *S v Williams* 1995 (2) PH H 30 (A) a prosecutor agreed to lose a docket in exchange for sexual intercourse with an accused. He pleaded guilty to a charge of defeating the ends of justice. On appeal his conviction was changed to attempt to commit the offence and he was sentenced to 5 years' imprisonment of which 2 years were suspended.

[22] Several of the other cases referred to by counsel dealt with corrupt activities by traffic officers who solicited bribes from motorists fined for traffic offences. The facts of those cases are not relevant to the present matter. None of the cases referred to by the counsel concerned an instance such as the present.

[23] The imposition of sentence is quintessentially a matter that falls within the discretion of the trial court. An appeal court is at liberty to interfere with the sentence imposed if, in imposing a sentence, the trial court has committed an error or misdirection or if the sentence is so disproportionate to the nature of the crime that it induces a sense of shock or outrage.

- [24] In evaluating whether or not to interfere with a sentence an appeal court is not at liberty to do so if the sentence is one that it would not have imposed. It must be satisfied that the sentence actually imposed is disproportionate in the circumstances and that it brings about an injustice.
- [25] It must be accepted that the sentence imposed upon the appellant on count one is a robust sentence. However, the robustness of the sentence is in large measure ameliorated by the order suspending a portion the sentence, thereby ensuring that the effective sentence served is appropriate to the crime.
- [26] We should not lose sight of the fact that the appellant was an officer of the court in a particularly important position of trust. What the appellant had offered to do was to profoundly undermine the administration of justice. This strikes at the very heart of the proper administration of justice and in my view it is a particularly serious offence which undoubtedly warrants a period of direct imprisonment. The sentence imposed upon the appellant is, in my view, not so disproportionate as to engender a sense of shock or outrage. It follows therefore that I am not satisfied that there is any basis to interfere with the sentence imposed by the trial court.

[27] In the result I make the following order:

The appeal is dismissed.

G. GOOSEN

JUDGE OF THE HIGH COURT

EKSTEEN, J.

I agree.

J.W. EKSTEEN

APPEARANCES: For the Appellant

J. R. Schoeman

For the Respondent

J. Engelbrecht

Director of Public Prosecutions

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