

SOUTH AFRICA / JUDGMENT

Mabaso and Another v S (A346/12) [2016] ZAGPJHC 356 (23 December 2016)

[2016] ZAGPJHC 356

COURT

South Gauteng High Court, Johannesburg

BEFORE

RE Monama

CASE / FILE NUMBER

A346/12

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REPUBLIC

OF SOUTH AFRICA

HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Case

No: A346/12

Reportable:

No
Of
interest to other judges: No
Revised.
In

the matter between:

JOSEPH
MABASO 1st
Appellant
VUSI
MATLALA 2nd
Appellant
and
THE
STATE Respondent

JUDGMENT

Coram RE Monama

Introduction

[1] The first appellant is Joseph Mabaso. The second appellant is Vusi Matlala. The appellants are co-accused in the matter before the regional court, Wynberg, Johannesburg. This is an appeal against the judgment in which the court a quo refused to admit them to bail pending trial.

[2] The appellants are facing several charges[1]. These are contravention of Section 17, 19 or 20 of Act 60 2000 (possession of two R5 rifles), The unlawful possession of jamming

device in contravention of section 86 (3) (4) (5), section 88 (1) and Section 89 and 250 of the Criminal Procedure Act and possession of suspected stolen good. The State alleges that these offences were committed on 10 November 2016 at or near Sunninghill, Johannesburg.

Bail application in court a quo

[3] On 30 November 2016 the applicant launched applications to be admitted to bail pending the trial. They were and still represented.

The State and the defence agreed that the applicants faces schedule 5 offences.[2]

[4] The parties presented evidence in this matter mainly by affidavits. The first appellant's evidence is supported or confirmed by his attorney.[3] The second appellant's evidence is on record.

[5] The parties led the evidence in this case primarily by way of affidavits. The State led evidence that is partly viva voce and

partly by way of affidavit's. The deponents to these affidavits are NH Van der Westhuizen and and Malibongwe Nxazonke, Marlin Pillay (Exhibit "C") and Aubrey Matunyane (Exhibit "E").[4]

The principles

[6] This is an appeal against the judgment and order of court a quo. This court can only interfere if there is misdirection in the refusal of the admission of the appellants to bail. This is trite. However, it must be noted that the court a quo had discretion. The appellant's main contention in this appeal is based on the following statements in the judgment of the court a quo.

"=with the accused's personal circumstances the court not have a problem. I do not have any evidence that they will not stand trial and that they will interfere with witnesses"

Counsel for the appellants relied heavily on this statement to advice their contention of misdirection.

[7] The appellants aslo relied on the alleged misinterpretation of the issues of previous convictions of the appellant. Both these

contentions are misplaced. In the evaluation of evidence, the rule or principle is clear.

“the question for determination is whether in the light of all the evidence adduced at the trial, the guilt of the Appellants was established beyond reasonable doubt. The breaking down of the body of evidence into its component parts is obviously a useful aid to a proper understanding and evaluation of it, but in doing so, one must guard against a tendency to focus too intently on upon the separate and individual parts of what is after all a mosaic of proof. Doubts about one aspect of the evidence led in a trial may arise when that aspect is viewed in isolation. Those doubts may be set at rest when it is evaluated again together with all the other available evidence. That is not to say that a broad and indulgent approach is appropriate when evaluating evidence, far from it. There is no substitute for a detailed and critical examination of each and every component in a body of evidence, but once that has been done, it is necessary to step back a pace and consider the mosaic as whole. If that is not done one may fail to see the wood of trees.”[5]

The parties cannot chose a portion of evidence and totally ignore the rest.

[8] The learned magistrate’s reasons must be seen in their entirety... the judgment is was stated that:

“So at this stage there is a prima facie case. Obviously the trial court will have to establish whether that is beyond a reasonable doubt and from his court’s experience that these inferences that can be drawn can be fatal to an accused’s case because inferences do not lie.

So from the staring point as far as this court is concerned, both the accused are linked to this vehicle. Inside the vehicle there are those two assault rifles. The minimum sentence for possession of one of these is 15 years imprisonment. Then we have this robbed vehicle either or possession of suspected stolen property. I can add fraud. By using a false registration number, you are committing fraud.

It is so as the prosecutor pointed out from the start, this is a serious case. It is an extreme serious case. With the accused’s

personal circumstances the court not have a problem. I do not have any evidence that they will not stand trial and that they will

interfere with witnesses, but the court’s problem is that they were found in possession of these serious weapons. A person possesses an assault rifle to kill, to maim and to rob. Captain Odendaal said these jammers are used in these armed robberies.

So these two people who are prima facie linked to these, appears to this court to be dangerous and one of this court's duties is to protect the community and under these circumstances, this court is not prepared to let them loose and the court therefore

finds it is not in the interest of justice if they are released on bail.”[6]

Accordingly, the appellants jettison the greater part of the reasoning of the court a quo. They picked and latched on the portion that they consider to be in their favour. That approach is definitely incorrect.

[9] the categorisation by the court below is correct. A rifle is dangerous. The jamming devices are equally dangerous. Accordingly,

these crimes cannot be treated lightly. I am conscious that the appellant's freedom is important. Any limitation thereof must

be justifiable.

[10] The court a quo was aware and conscious about the appellant's freedoms. The court justified its decision.

[11] Accordingly, I found no misdirection. Therefore, make the following order:

1. The appeal is dismissed.

RE MONAMA

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances

For the 1st Appellant:

Adv. PJC Kriel

Instructed by:

Mampa attorneys, Johannesburg

For the 2nd Appellant

Adv. N Makhubele

Instructed by:

Victor Nkhwashu Attorneys, Johannesburg

For the Respondent:

Adv. LL Mashiane

Instructed by:

The Director of Public Prosecutions, Johannesburg

Date of hearing:

23 December 2016

Date of

judgment:

23 December 2016

- [1] See pages 24, 30, 31 of the paginated record.
- [2] See Page 65 (line15) of the paginated record.
- [3] The first appellant's evidence is on pages 33 – 38 of the paginated record. And the second appellant's evidence is on pages 42-52 of the paginated record.
- [4] See pages 55 to 60 and 98 – 105 of the paginated record.
- [5] S v Hadebe and Others 1997(2) SACR 641 SCA at 645J – 655AB., See also S v Trainor 2003(1) SACR 35 SCA at 40F – 41 A-C
- [6] See page 3

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