

SOUTH AFRICA / JUDGMENT

Macrae and Another v S (93/2013) [2014] ZASCA 37; 2014 (2) SACR 215 (SCA) (28 March 2014)

[2014] ZASCA 37

COURT

Supreme Court of Appeal

BEFORE

Mhlantla, Wallis, Mocumie

CASE / FILE NUMBER

93/2013

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THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 93/2013

In the matter between:

COLIN MACRAE.....First Appellant

THEONY ELIZABETH MACRAE.....Second Appellant

and

THE STATE.....Respondent

Neutral citation: Macrae v State (93/2013)

[2014] ZASCA 37 (28 March 2014)

Coram: MHLANTLA and WALLIS JJA and MOCUMIE AJA.

Heard: 24 March 2014

Delivered: 28 March 2014

Summary: Criminal law and procedure – baboon – seizure in terms of ss 20 and 21 of the Criminal Procedure Act 51 of 1977 (CPA) – obligations of police in respect of seized animal – theft – requirements – defeating or obstructing administration of justice – fair trial where accused not represented – duties of prosecutor restated.

ORDER

On appeal from: North Gauteng High Court, Pretoria (Webster J, Mngqibisa-Thusi J concurring, sitting on appeal from the Magistrates' Court):

The appeals are upheld and the convictions and sentences on all counts are set aside

Wallis JA (Mhlantla JA and Mocumie AJA concurring)

- [1] This is a case about a baboon. By all accounts, until it apparently met an untimely end, the baboon behaved impeccably. The saga has involved a trial in the district court over four days, an appeal to the full court of the North Gauteng High Court, a petition to this court and then this appeal. The expenditure of time and effort and the costs to the public purse and the appellants, Dr and Mrs Macrae, have been considerable. Those include emotional costs, because for seven and a half years the trial and their convictions for defeating or obstructing the administration of justice and theft of the baboon have hung over their heads. And all this was caused by a bureaucratic insistence by the officials of the Gauteng Directorate Nature Conservation that the baboon be removed from their possession, where it is common cause it was being properly cared for. The irony of the situation is that, so we were informed from the bar, after the baboon was handed to these officials at the end of the trial in the district court, it was placed in a shelter where it appears to have burned to death in a fire. Had it remained with the Macraes there is no reason to believe that it would now be anything other than hale and hearty. To understand how all this came about it is necessary to trace the history in a little detail.
- [2] The story commences on 10 October 2006, when Mrs Coetzee and Mrs Boshoff, both nature conservation officers employed by the Directorate Nature Conservation of the Gauteng Department for Agriculture, Conservation, Environment and Land Affairs (the Directorate), found the baboon and three ant bears in cages on the property of a Mr Lourens in Hammanskraal. Mrs Boshoff had earlier obtained a search warrant from a magistrate. As only a police official can execute a search warrant,[1] Inspector Grobler of the South African Police Service (SAPS) accompanied the two nature conservation officers. The ant bears required urgent veterinary treatment at the Johannesburg Zoo, but neither that zoo, nor the Pretoria Zoo, could accommodate the baboon and the conservation officers had not brought sufficient transport crates with them to carry the baboon safely to the Emerald Zoo, some 370 kms away in Vanderbijlpark. Instead it had to be transported in a makeshift crate.
- [3] As a result of this difficulty Mrs Coetzee contacted Mrs Macrae, the second appellant, who, together with her husband, Dr Macrae, the first appellant, operated a game lodge under the name Horseback Africa, and asked if they would take the baboon. The Macraes had a zoo licence entitling them to be placed in possession of the baboon and already had a domesticated baboon, called Jessica. Mrs Macrae agreed to take the seized baboon and later that day Mrs Coetzee handed it over to Dr Macrae at the game lodge. I will return to the conversation between Mrs Coetzee and Mrs Macrae in due course.

- [4] The baboon was handed to Dr Macrae, in the presence of Inspector Grobler, and Mrs Coetzee completed and signed a document on the stationery of the Directorate and headed “Certificate of Handover to Institution’. It identified Horseback Africa as

the institution and recorded that:

‘I HEREBY HANDOVER ACCORDING TO TREASURY APPROVAL FROM GAUTENG PROVINCIAL GOVERNMENT: DIRECTORATE NATURE CONSERVATION THE UNDERMENTIONED ANIMAL ... TO THE HORSEBACK AFRICA ZOO ...’

The document identified the animal as the baboon and recorded that it had been seized that day at Hammanskraal.

- [5] Thus far there was no problem. That only arose the following day when Mrs Hugo, the Assistant Director: General Investigations in the Directorate informed Mrs Coetzee that she had made a mistake in leaving the baboon with the Macraes and that she would need to recover it. In the result over the next few days there were some exchanges between officials of the Directorate and the Macraes over the baboon, with the officials demanding its return and the Macraes contending that it was now theirs.
- [6] On 18 October 2006 this dispute culminated in Mrs Boshoff and Mrs Eloff, also a nature conservation officer; a private vet and, for some unexplained reason, a representative of a group that deals with elephants; together with Inspector Grobler and two other SAPS officers attached to the flying squad, going to Horseback Africa’s premises to retrieve the baboon. After the convoy arrived a confrontation ensued, with Dr Macrae asserting that the baboon was now theirs and claiming that in the absence of a warrant their presence on his property was unlawful. The officials and the police pushed past him and went to the animal cages, where they found Jessica, the other baboon, but not the one they sought. It had apparently gone for a walk with the Macraes’ son. Tempers

became somewhat heated and in blunt terms Dr Macrae told the officials and police to leave his property. Instead, Inspector Grobler, at the request of Mrs Boshoff, arrested him for obstructing the administration of justice. According to her she did so because he

would not hand over the baboon or tell them where it was. Mrs Macrae returned at this stage and tried to intervene in her husband’s

arrest, eventually removing the keys from the ignition of the SAPS vehicle. This led to her also being arrested.

- [7] Dr and Mrs Macrae were then charged in the district court at Cullinan with three counts. The first was that they were both guilty of ‘obstructing/defeating the administration of justice’ by refusing to hand over the baboon to Inspector Grobler and the nature conservators, ie Mrs Boshoff; by ordering them to leave the premises and by refusing to disclose the whereabouts of the baboon. The second count was directed at Mrs Macrae alone and was one of ‘attempted obstructing/defeating the administration of justice’. The

allegation was that she had refused to hand over the baboon and had grabbed the keys of the SAPS vehicle and refused to give them back. Thirdly they were both charged with the theft of the baboon. The magistrate found them guilty on

those three charges and imposed wholly suspended sentences in respect of all of them. An appeal to the Gauteng North High Court, Pretoria failed and this further appeal is with the leave of this court.

[8] Throughout the course of this dispute the Macraes have steadfastly maintained that once Mrs Coetzee handed the baboon to them it became theirs, subject only to their being obliged to produce it as an exhibit at any trial of Mr Lourens, insofar as that might become necessary, and to make it available for any forensic purpose related to any charges against Mr Lourens. They also accepted that, if at the end of any such trial the court ordered that the baboon be returned to Mr Lourens they would return it. No criticism was directed at their ability to care properly for the animal and it was not suggested that they would not co-operate with the police, the Directorate and the prosecution service in the conduct of any trial. Nor was it suggested that by leaving the baboon

in their care this would place the animal or any trial at risk.

[9] One wonders in those circumstances why it was thought necessary to interfere with the perfectly satisfactory arrangements that had been put in place for the care of the baboon. The answer is that Mrs Hugo, the Deputy Director of the Directorate, took the view that it was contrary to some unspecified treasury regulations to allow it to remain with the Macraes. Her view was that the baboon had to be kept at a treasury-approved zoo pending the trial, because there was a court case pending, and thereafter, if the baboon was forfeited to the State, a decision would be made about its future. This was why she instructed Mrs Coetzee to retrieve the baboon and why she was, throughout her dealings with the Macraes, obdurate that the baboon could not remain with them. It is why she instructed Mrs Boshoff to go and fetch the baboon on 18 October 2006. Mrs Coetzee and Mrs Boshoff for their part adopted the approach that the baboon was state property and therefore that the Macraes were obliged to hand it over on demand to them as the appropriate functionaries of the state.

[10] At the outset it is necessary to note two points. The first is that, as all three charges depended on the failure to hand over the baboon, there was an improper splitting of charges and an improper duplication of convictions.[2] The second is that at no stage in these proceedings has there been any attempt to place before any of the courts seized of the case, either the relevant provisions of the Nature Conservation Ordinance 12 of 1983 (Transvaal) under which the baboon was seized in the first place, or the alleged treasury regulations on which Mrs Hugo relied in giving instructions that the baboon be removed from the Macraes.

[11] So far as the court can ascertain from its research baboons are listed in Schedule 8 to the Ordinance as 'problem animals' and as such are dealt with in Chapter 5, which provides in s 56(1) that if they are found outside a nature reserve or national park, they are deemed to be

vermin or animals that cause damage. As such they are liable to be hunted. Possession of a baboon without a permit is prohibited under s 66(1)(b) of the Ordinance. That appears to justify the seizure of the baboon, but it hardly means that it was likely to be an exhibit at a trial. After all, if, as presumably was the case, Mr Lourens did not have a permit to be in possession of the baboon it is hard to see how the presence of the baboon could be relevant at his trial for unlawful possession of the baboon. There was accordingly no practical reason, relating to any prosecution of Mr Lourens, for removing the baboon from the Macraes.

[12] Because the treasury regulations were not placed before the trial court or this court we have no way of knowing whether Mrs Hugo was correct in her interpretation of them. Her officers thought that an animal seized under a search warrant became the property of the state and had to be handed over for that reason. That view was plainly wrong in law. The baboon was owned by Mr Lourens and would not cease to be his property unless and until it was forfeited to the state in terms of s 112(1)(a)(i) of the Ordinance. I can understand that the treasury regulations would deal with the care of state property, but the baboon was not state property. If therefore they were applicable it must have been on some other basis.

[13] Mrs Hugo did not expressly endorse the view that the baboon was state property, but said that, because the baboon was an exhibit in a pending court case, it had to be held at a designated zoo. As pointed out earlier it was unlikely that the baboon would be needed as an exhibit at the trial, but, even if it was, the Macraes were willing and able to make arrangements for it to attend. Furthermore the police, in the guise of Inspector Grobler, and not the conservation officers from the Directorate, had seized the baboon under a warrant issued in terms of the CPA and were obliged to deal with it in terms of the CPA. Indeed the argument for

the State in this appeal depended upon the correctness of that proposition. In those circumstances, it would be unusual, to say the least, for treasury regulations issued at a provincial level to dictate how the police, who function at a national level of

government, were to perform their statutory functions. It follows that there is every reason to doubt whether Mrs Hugo was correct in her understanding of the regulations and whether her actions consequent upon that understanding were justified.

[14] Turning to the merits of the convictions, on the assumption that the issues already discussed can be disregarded, as they have been throughout the case's peregrinations through the court system, all the charges faced by the Macraes arose from their failure to hand the baboon to Mrs Boshoff on 18 October 2006. Even if they were obliged to do so, I think that on the evidence their refusal was entirely bona fide and based on their belief that, subject to the outcome of Mr Lourens' criminal trial, the baboon was theirs. That conclusion suffices to exclude the possibility of their having acted with any criminal intent and justifies their acquittal on all of the charges. My reasons for thinking this are briefly as follows.

[15] Mrs Macrae testified that when Mrs Coetzee telephoned her on 10 October and asked if they could accommodate the baboon she asked whether they would like a mate for their baboon, Jessica. That evidence finds support in Mrs Coetzee's evidence that she told Mrs Macrae that after Mr Lourens' trial, there was a possibility they could make the baboon available to the Macraes

as a companion for Jessica. The terms of the handover document were also definitive and not qualified in any way. Mrs Coetzee tried to suggest that she qualified it by saying that the arrangement was temporary, but that was refuted by both Dr and Mrs Macrae, as well as their daughter who was present. Their evidence was barely challenged in cross-examination.

[16] Furthermore Mrs Macrae said that she specifically asked whether they needed to amend their existing zoo permit to include the new baboon, or whether they needed to record it as a drop off, and was told by Mrs Coetzee that neither step was necessary. It would suffice to say that the magistrate made no credibility findings against the Macraes and accordingly Mrs Macrae's evidence on this point must be accepted. However, it is supported by the probabilities. They had previously experienced problems with officers from the Directorate and Inspector Grobler over Jessica and would have been careful to ensure that procedures were correct on this occasion. Then there was Mrs Coetzee's statement in which she recorded that she had left the baboon with the Macraes 'Tot

na die hofsaak' (Until after the court case). In addition she testified that it was only the following day, when she went into the office that Mrs Hugo told her that she had made a mistake and must retrieve the baboon. That mistake can only have been that she had handed the baboon to the Macraes on a permanent basis. Furthermore the evidence of Mrs Hugo on this point is not wholly satisfactory. She had been present when the baboon was seized and was a party to the arrangement that it be taken and left with the Macraes. If at the time she had believed that this was a purely temporary arrangement for a day or two until alternative arrangements could be made, it would be surprising had she not made that clear to both Mrs Coetzee and Inspector Grobler. Instead her epiphany appears to have come when she returned to the office and consulted both the regulations and her superior in regard to the disposition of the baboon.

[17] Lastly on this aspect of the case, if Mrs Hugo thought that the baboon had been left temporarily with the Macraes, it is unclear why she would have told Mrs Coetzee that she had made a mistake. That would not have been true if this had in fact been a temporary arrangement as an emergency measure. Instead one would have expected her to make a routine enquiry about when Mrs Coetzee proposed to collect the baboon and which zoo she intended taking it to. In my view, weighing the evidence as a whole the probabilities favoured the version of the Macraes in regard to the circumstances in which the baboon was handed to them. At the trial much was made of an e-mail Mrs Macrae sent to Mrs Hugo, after Mrs Coetzee contacted her on 11 October and said that procedures had not been followed in handing the baboon to them. However, read in context, that was nothing more than an attempt by Mrs Macrae to assist Mrs Coetzee and Mrs Hugo to get their paperwork in order. It did not undermine her evidence concerning the basis upon which the baboon

was delivered to them.

- [18] Having said that the question remains whether it is correct that the Macraes were under an obligation to hand the baboon to Mrs Boshoff on 18 October as she demanded. If there was no obligation to do so, then the demand was unlawful; Dr Macrae's approach that they were not welcome on his property was entirely justified; and, because he was acting within his rights in refusing to hand over the baboon in response to an unlawful demand, his arrest was unlawful. Mrs Macrae's actions in seeking to come to his assistance were also lawful and her arrest unlawful.
- [19] Starting, as one must, with the charge of theft it was based on the proposition that the baboon was 'the property or in the lawful possession of Nature Conservation[3] and/or M Boshoff'. However, that was incorrect. Inspector Grobler seized the baboon, not Mrs Boshoff or Mrs Coetzee. Having seized it she was under an obligation in terms of s 30(c) of the CPA either to retain it in police custody, which was not a practical option, or to 'make such other arrangements with

regard to the custody thereof as the circumstances may require'. That is precisely what she did on the advice of Mrs Hugo (who was present when the animal was seized) and Mrs Coetzee. She took it to the Macraes, who were undoubtedly able to care for it and placed it in their custody. It is clear that they understood that there was a potential for there to be a criminal trial at which the baboon might need to be produced and that they were aware that unless the baboon was forfeited to the State, it would have to be returned to Mr Lourens. Inspector Grobler had therefore discharged her statutory obligations. The baboon was in appropriate safe custody and available to the police for the purposes of the prosecution of Mr Lourens to the extent that was necessary.

- [20] The baboon was neither the property of, nor in the lawful possession of, either 'Nature Conservation' or Mrs Boshoff. It had been in the lawful possession of Inspector Grobler and she had placed it in the lawful possession of the Macraes. It had never been in the possession of the nature conservation officers. However, Mrs Hugo and the other officials from the Directorate were plainly of the view that it was for them to dispose of the baboon as they deemed appropriate, subject to their understanding of the treasury regulations. They were the people who decided to recover the baboon from the Macraes. They were the ones who demanded its return. They were the ones who organised to go to the Macraes' property on a mission to recover the baboon. They organised for the two officers, Mrs Boshoff and Mrs Eloff, to be accompanied by a vet, Inspector Grobler and the two flying squad officers. On arrival there they were the ones who demanded that the baboon be handed over. In all this Inspector Grobler played at most a

supporting role. Her own evidence was that the decision of what to do with the baboon 'is not for me to make'. Her complete subordination to the nature conservation officers is summed up in the following passage from her evidence:

‘I act on what they tell me. If they say the baboon must be taken there so that they can make a decision on where the baboon must go, then I am not going to question that.’

[21] This entirely misconceived the legal position. It was Inspector Grobler who had seized the baboon and it was her responsibility to make arrangements for its custody pending any criminal trial. That is why I am doubtful whether the treasury regulations on which Mrs Hugo relied in fact had any application to this situation. As it was for Inspector Grobler to decide where and in what circumstances the baboon was to be kept, she, or one of her colleagues in the SAPS, was the only person who was entitled to remove it from the Macraes and then only in circumstances where the exigencies of the criminal process required it. What she was not permitted to do was to take instructions from a third party in the form of the officials of the Directorate Nature Conservation as to the disposal of the baboon.

[22] I have no doubt that it is correct, as submitted by Mr Luyt, who appeared for the State, that Inspector Grobler was entitled to seek the advice of those officials as to a suitable place to have the baboon cared for pending a criminal trial. That is what rendered the handover to the Macraes lawful. However, when it came to the removal of the baboon, Inspector Grobler was not acting on the advice of the conservation officers about the care of the baboon, but was assisting them to comply, as they thought, with treasury regulations that may or may not have had any application to the situation. Her purpose was to satisfy their bureaucratic wishes,

not to act in terms of the powers she had under s 30(c) of the CPA. She simply went along with Mrs Boshoff’s request that she accompany them on the operation to retrieve the baboon

without enquiry. The fact that she took two colleagues from the flying squad with her shows that they intended a show of force to back up the conservation officers in retrieving the baboon. Tellingly, when she was being cross-examined by Mrs Macrae, she was asked why the baboon needed to be removed from the Macraes and the magistrate interposed:

‘I do not think that is relevant to her in terms of whether it was removed or not, so to her it might not mean anything. She is a police officer who has been called up to say: “Help us to go there”.’

The magistrate went on to say:

‘Whether it is removed or not, it is none of her business.’

Notwithstanding her claimed familiarity with the provisions of the CPA Inspector Grobler did not demur at this intervention from the court or assert that she had in fact exercised any independent judgment in regard to caring for the baboon.

[23] The end result is that the charge of theft was utterly misconceived. The baboon was not, and never had been, either owned by or in the lawful possession of either 'Nature Conservation' or Mrs Boshoff. In those circumstances Mr Luyt accepted that the conviction for theft could not stand. Of course, once the demands made by Mrs Boshoff for the return of the baboon lacked a legal foundation so did the arrest of Dr Macrae for refusing to hand it over. Mrs Macrae's intervention to try and assist

her husband was likewise not unlawful and her arrest also lacked any legal foundation. It follows that the appeals must succeed and their convictions and sentences must be set aside.

[24] There is, however, a further ground on which the appeals would in any event have to have succeeded. The Macraes chose to represent themselves at the trial, notwithstanding the magistrate's suggestion that they secure legal representation. However, once that was the case, the magistrate was under a special duty to ensure that they had a fair trial. When asked whether they had in fact had a fair trial, Mr Luyt's response was: 'Not really.' That concession was undoubtedly correct. The problems commenced at the outset when they were confronted with charges improperly separated[4] and continued when Dr Macrae was invited to cross-examine the first witness Mrs Coetzee. The magistrate did not explain the purposes of cross-examination or draw his attention to the need to put to witnesses where his and his wife's version of events differed

from theirs. This was highly relevant for the following reasons.

[25] I have already mentioned that, when the nature conservation officers found the animals with Mr Lourens, they did not have the means to transport the baboon for any distance and they needed to deal with it quickly. That is why the Macraes were approached. Of vital importance in that regard is what they were told when approached. I have dealt with this in paras 15 to 17. The prosecutor challenged Mrs Macrae's evidence on her conversation with Mrs Coetzee. She asked her why this evidence had not been put to Mrs Coetzee. The magistrate then intervened to say that he had underlined this evidence, as a matter not put to the earlier witness. He did the same again when Mrs Macrae testified that when the baboon was handed over she asked if there was anything further that had to

be done, either to amend their existing permit or to register the animal as a drop off and was told that nothing more was necessary. He said that this was the third time this had occurred. However, as Mrs Macrae had not been warned of the need to put disputed matters to witnesses that was blatantly unfair of him, as was the cross-examination by the prosecutor. It was even more unfair in view of the fact that in crucial respects Mrs Coetzee's evidence corroborated that of Mrs Macrae.

[26] It was a central plank of the defence being raised by the Macraes that what happened when the baboon was dropped off with them was in accordance with past practice in other cases where nature conservation officers seized animals. However, when Dr Macrae asked that the documents bearing on such cases be disclosed to him, the magistrate explained that he would only adjudicate on what happened on the incident on 18 October. For the same reason

he did not accede to the request that Dr Macrae be furnished with the affidavit by Mrs Boshoff when she applied for the search warrant. Every time either Dr Macrae or Mrs Macrae tried to deal with these matters the magistrate told them that it was not relevant because he was only concerned with the events of 18 October. That was wrong

and it prevented the Macraes from advancing their defence properly.

[27] There were problems in other respects. At the end of his evidence the magistrate questioned Dr Macrae at length and his questions cover 10 pages in the record. That was inappropriate. Dr and Mrs Macrae's daughter was called to give evidence and the magistrate was quick to say that he must not put answers in her mouth and that he could not put questions to his own witness.[5] Mrs Coetzee's statement was clearly material as were the statements of other conservation officials. Yet the magistrate made

no attempt to ensure that they were made exhibits. All that he did was to tell them that they should not cross-examine on a statement,

without first proving its authenticity, which was a bizarre proposition bearing in mind that the statements would have been furnished to the Macraes by the prosecution. When Dr Macrae sought to cross-examine Mrs Boshoff on what was in Mrs Eloff's statement

he stopped him from doing so, on the ground that Mrs Eloff was not going to be called as a witness. That too was clearly wrong. On other occasions, such as the one mentioned in para 18 above, he cut short legitimate cross-examination.

[28] The above more than suffices to demonstrate that the Macraes did not have a fair trial and that the concession by Mr Luyt was well-founded.

What is inexplicable in those circumstances is why he in this court, and his predecessor in the full court, did not make that concession

at the outset. Instead the office of the Director of Public Prosecutions not only pursued the prosecution, but defended the conviction in the full court and resisted leave to appeal being granted to this court. The concession was only forthcoming at the end of Mr Luyt's argument. It needs to be stressed once again that the duty of prosecutors is not to secure a conviction at all costs or to defend convictions once obtained. Their duty is to see that so far as possible justice is done. As Jones J expressed it in *S v Fani*: [6]

'The object of criminal proceedings in our law has never been to secure a conviction at all costs. The duty of the prosecution is to present all the facts in an objective and fair manner so as to place the court in a position to arrive at the truth.'

Where an appeal is being argued one expects the prosecutor to do so in an objective and fair manner and, if satisfied that the conviction is flawed, to draw that to the attention of the court, particularly where the flaw goes to the heart of the fairness of the trial at which the accused person was convicted.

[29] Before concluding it is necessary for me to say that the course of events in this case is a classic instance of bureaucratic overreach. Whatever the merits of Mrs Hugo's concerns it was clear that there was a genuine disagreement with the Macraes over the status of the baboon. That did not warrant sending a convoy including three armed police officers and a vet with a gun to dart the animal to collect the baboon. The image is redolent of an American police drama rather than a dispute over the impact of treasury regulations on the care and custody of a baboon. The behaviour of Mrs Boshoff in demanding that Dr Macrae hand over the baboon was calculated to put his back, up as it did. There was no attempt to engage in a courteous fashion with the Macraes and resolve their concerns. Throughout, the conservation officials, starting with Mrs Hugo, obdurately insisted that they were entitled to the baboon and demanded that it be given to them. On the day in question they were supported by an implicit threat of force from the police. Their approach was to assert that they were entitled to the baboon and insist that Dr Macrae submit to their demands. It seems reasonably clear that if the baboon had been in one of the cages they would have taken it forcibly.

[30] The conservation officers knew that Dr Macrae would resist their demands and were aware of his basis for doing so. If there was some real and pressing need for them to retrieve the baboon they could have approached a court on notice for a suitable order. If the matter was urgent that could be accommodated within the ordinary court processes. Then their entitlement to the baboon would have been tested in the appropriate way. Instead, they resorted to force and wound up arresting two perfectly peaceable citizens for no good reason, the arrest in Mrs Macrae's being preceded by Inspector Grobler grabbing her by the collar and shaking

her while screaming at her. That is not the kind of conduct we expect of our public officials. When that conduct was sought to be made the subject of a criminal charge the prosecutor, or her appropriate superior, should have exercised a sensible discretion and declined to prosecute. Had they done so, this case, which does no credit to the conservation officers and police involved or to the prosecution service that has pursued it to this court, would have been still born.

[31] The appeals are upheld and the convictions and sentences on all counts are set aside.

M J D WALLIS

JUDGE OF APPEAL

Appearances

For appellant: S J Maritz SC

Instructed by:

J P A Venter, Menlo Park, Pretoria and

Symington & De Kok, Bloemfontein

For respondent: P C B Luyt

Instructed by:

Director of Public Prosecutions

Pretoria and Bloemfontein.

[1] Section 21(2) of the Criminal Procedure Act 51 of 1977 (the CPA).

[2] Maseti v S [2014] 1 All SA 420 (SCA) para 3.

[3] I assume that by 'Nature Conservation' the person who drafted the charge had in mind the Directorate Nature Conservation

or the provincial department of which it formed a part and that this was simply sloppy drafting.

[4] The magistrate should have intervened to remedy this at the outset. S v Makazela 1965 (3) SA 675 (N).

[5] The magistrate also told him that he could not object to the questions being put to Mrs Macrae even though the purpose of the

objection was to correct a factual error on the part of the prosecutor.

[6] S v Fani and others 1994

(3) SA 619 (E) at 621I-J.

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