

SOUTH AFRICA / JUDGMENT

Mokoena v S (A15/2017) [2018] ZAGPPHC 356 (17 May 2018)

[2018] ZAGPPHC 356

COURT

North Gauteng High Court, Pretoria

BEFORE

AC Basson, Strijdom

CASE / FILE NUMBER

A15/2017

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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1)

NOT REPORTABLE

(2)

NOT OF INTEREST TO OTHER JUDGES

(3)

REVISED.

CASE

NO: A15/2017

17/5/2018

In

the matter between:

KGOPOTSO
GIVEN
MOKOENA
Appellant
And
THE
STATE
Respondent

JUDGMENT

AC BASSON, J

[1] The appellant was arraigned on three charges:

Count 1: Failure to comply with a court order;

Count 2: Housebreaking with the intent to commit an offence unknown to the State and

Count 3: Trespassing.

[2] The appellant was acquitted on counts 1 and 2 but was found guilty on count 3: Trespassing. He was sentenced to a fine of R 2000.00 or 12 months 'imprisonment half of which was conditionally suspended for 5

years. The court in addition ordered that the appellant must immediately vacate the property.

Ad conviction

[3] In respect of count 3 it was alleged that the appellant had unlawfully and without the permission of the complainant - Ms Sinah Ramodibe - occupied a property in Ekushuleni South East.

[4] It was never disputed that the complainant bought and was in fact the lawful owner of this particular property. The transfer of the property from the names of the parents of the appellant into the name of the complainant was effected on 20 July 2004. It was also common cause that the appellant resided in this property up until his first appearance in court.

[5] In respect of count 3, the appellant's plea explanation to court was that he never received any court documents citing him as an interested party. He also pleaded that he never received a court order informing him that he had to evict the property in which he had been residing in since 1991 when he was approximately 9 years old.

[6] The first witness of the State was Mr Rossouw - the sheriff who served the warrant of execution that was issued out of the Magistrate's Court of Benoni. According to Rossouw they found a gentleman with the name of S Mokoena at the property. On the return of service, S Mokoena is identified as the son of the defendants (the parents of the appellant). The warrant of execution was explained to him whereafter all the furniture in the home was removed and the locks on

the property changed.

[7] Rossouw was unable to confirm whether the appellant was present when he evicted the occupants from the home and removed their furniture. It was, however, common cause that Rossouw served the eviction order in

the names of the parents of the appellant on the brother of the appellant at the premises on 21 September 2011.

[8] The complainant (Ms Sinah Ramatibe) confirmed that the locks on the doors were changed by the Sheriff and when she received the keys from the sheriff she moved her own possessions into the house. She then left

the house to do her shopping at the mall. Upon her return she found that all her property had been removed from the house, that the locks to the doors were broken open and that there was a crowd of people including the Mokoena family and the appellant in front of the house. She perceived the crowd to be violent and sought the assistance of the police.

[9] Ramatibe testified that she did speak to the appellant and informed him that she wanted to occupy her house. He informed her that he was not going to move out of the house as it belonged to his father. He also informed her that he had nowhere else to go. The complainant's evidence in this regard was not challenged in cross-examination. It was also not disputed that the locks to the doors were broken open.

[10] The version of the appellant was that he was at work and that he was informed upon his return from work that people came to evict them from the house.

[11] The appellant, however, remained in the property until 27 May 2015 when he was arrested.

[12] The question before the court was whether the appellant up until his arrest in May 2015 was unaware of the fact that the house had been bought by the complainant and that she wanted to occupy her house.

[13] The learned magistrate evaluated the evidence and concluded that it was not reasonably possibly true that the appellant was never told to move out. In this regard she took into consideration that there was an eviction notice signed by the appellant's brother and secondly the fact that the police came with the complainant to the property after her belongings were removed.

[14] I can find no reason to interfere with the conclusion reached by the learned magistrate. It is inconceivable that the appellant could not have known of the sale of the house and the subsequent eviction notice particularly after the police had arrived at the house. It is simply improbable that the police would not have mentioned that the occupation of the appellant and his family was unlawful.

[15] In respect of the sentence impose I can likewise find no reason to interfere with the magistrate's discretion. It is trite law that the determination of an appropriate sentence resided pre-eminently within the discretion of the trial court and that an appeal court will only interfere with the exercise of such a discretion under circumscribed circumstances.[1]

[16] The complainant bought the house and for 12 years she had been paying rates and taxes. In spite of following all lawful processes to gain access to her property, she had been denied this right by the appellant and his family. The appellant simply disregarded her rights and since the eviction in 2011 until his arrest in 2015 simply continued to live in the complainant's house. In light of these facts it cannot be concluded that the sentence imposed was shocking, startling or disturbingly inappropriate.

Order

The appeal against conviction and sentence is dismissed.

AC BASSON

JUDGE OF THE HIGH COURT

I agree

STRIJDOM

ACTING JUDGE OF THE HIGH COURT

[1] See *S v Malgas* 2001 (2) SA 1222 (SCA) at 1232A-D: "A Court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court. Where material misdirection by the trial court vitiates its exercise of that discretion, an appellate Court is of course entitled to consider the question of sentence afresh. In doing so, it assesses sentence as if it were a court of first instance and the sentence imposed by the trial court has no relevance. As it is said, an appellate Court is at large. However, even in the absence of material misdirection, an appellate Court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate Court would have imposed had it been the trial court is so marked that it can properly be described as 'shocking,' 'startling' or 'disturbingly inappropriate.'"

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