

SOUTH AFRICA / JUDGMENT

Ngamntwini v S (CA&R 274/11) [2012] ZAECHGC 69 (6 September 2012)

[2012] ZAECHGC 69

COURT

Eastern Cape High Court, Grahamstown

BEFORE

Hartle, Griffiths

CASE / FILE NUMBER

CA&R 274/11

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IN THE EASTERN CAPE HIGH COURT, GRAHAMSTOWN

CASE NO: CA&R 274/11

In the matter between

THEMBELA NGAMNTWINIAPPELLANT

Versus

THE STATERESPONDENT

APPEAL JUDGMENT

HARTLE J

The appellant was convicted by a magistrate of assault with intent to do grievous bodily harm and sentenced to twelve months' imprisonment.

The trial court granted him leave to appeal against both conviction and sentence which was the basis upon which the matter came before us.

It was difficult to determine on what facts the appellant was convicted. Firstly the record was incomplete despite the parties' best efforts to reconstruct it. (The magistrate indicated that she could not find her contemporaneous notes and was therefore unable to be of any assistance in this regard). The transcript of the evidence of both the appellant and his two witnesses especially is replete with instances where the transcriber has noted that answers to questions are indistinct and even "very indistinct".

Further, in the judgment reference is only made to the evidence of the appellant's two defence witnesses without any regard to that of the complainant. Although the state argued in the trial court that the appellant should be convicted on his own version (which was that he had stabbed the complainant in self defence), it is not apparent from the judgment even in this respect why the magistrate concluded that he should be convicted.

Her entire judgment reads as follows:

"Your first witness that came today tried but in vain to protect you. Nervously on him was to the extent that as if he was an accused person. Initially he was convinced that the stabbing was outside the kitchen door, outside on the stoep. That was his

evidence. After the attorney forcefully from him changed his mind, he knew that he was saying something wrong about the friend. And he changed his story.

The next witness, supposedly related to you, I'm looking at the surname, was very honest to the Court when he told us what happened on the day in question. When later scrutinized actually on us on the defence, he could hear or see that there was something wrong that he was saying. But his rescue was very late. He could not rescue you until this moment.

Yes, I'm CONVICTING YOU AS CHARGED."

The need for the presiding judicial officer to set out the evidence and analyse it in his/her judgment recently received the attention of this court in *S v Mcoseli*¹ in which matter Pickering J felt compelled to criticize a regional magistrate for his failure to do so, noting that the judgment in that matter fell short of the minimum standard which can reasonably be expected of a magistrate and that it amounted to a dereliction of his duty as such.

In *Value Truck Rental (Pty) Ltd v John Dirker Engineering (Pty) Ltd*² Plasket J highlighted the reason why it is necessary for a magistrate to deal with the facts in his judgment as follows:

*".. the facts, whether they are common cause or contested have to be applied to the applicable legal principles in order for a judicial officer to arrive at a rational conclusion; and where the facts are in dispute, it is incumbent on the magistrate to decide, on the basis of well established rules, whether the facts asserted by the plaintiff or defendant are more probably true."*³

The constitutional court in *Mphahlele v First National Bank of South Africa Ltd*⁴ has also stressed the importance of proper reasons in a judgment as follows:

"[12] There is no express constitutional provision which requires Judges to furnish reasons for their decisions. Nonetheless,

in terms of s 1 of the Constitution, the rule of law is one of the founding values of our democratic state, and the Judiciary is bound by it. The rule of law undoubtedly requires Judges not to act arbitrarily and to be accountable. The manner in which they

ordinarily account for their decisions is by furnishing reasons. This serves a number of purposes. It explains to the parties, and to the public at large which has an interest in courts being open and transparent, why a case is decided as it is. It is a discipline which curbs arbitrary judicial decisions. Then, too, it is essential for the appeal process, enabling the losing party to take an informed decision as to whether or not to appeal or, where necessary, seek leave to appeal. It assists the appeal Court to decide whether or not the order of the lower court is correct. And finally, it provides guidance to the public in respect of similar matters. It may well be, too, that where a decision is subject to appeal it would be a violation of the constitutional right of access to courts if reasons for such a decision were to be withheld by a judicial officer.”⁵

In this instance the magistrate just simply failed to grasp the nettle and added nothing to her judgment when invited to furnish reasons in anticipation of the intended appeal. This is to be lamented and reflects poorly on the magistracy.

But even leaving aside the problem with the unsatisfactory record and the absence of any cogent reasons furnished for the magistrate’s judgment, the evidence in this matter (such as could be discerned) was confusing and the events of the night in question anything but clear. Evidently both the complainant and the appellant had imbibed alcohol which may have contributed to the concatenation of events babbled out in court which ultimately in my view conduced to render the appellant’s version of the circumstances under which he stabbed the complainant to be reasonably possibly true.

I am inclined in the circumstances to uphold the appeal and to set aside the conviction and sentence of the magistrate.

HARTLE J

JUDGE OF THE HIGH COURT

I AGREE AND IT IS SO ORDERED:

GRIFFITHS J

DATE OF APPEAL : 29 August 2012

DATE OF JUDGMENT: 6 September 2012

COUNSEL FOR APPELLANT: Adv D P Geldenhuys

Justice Centre

Grahamstown

COUNSEL FOR RESPONDENT: Adv H Obermeyer

Director of

Public Prosecutions

1 2012

(2) SACR 82 (ECGH) at p 85 – 86. See also *S v Bruintjies & Others*, Eastern Cape Division, Case No. CA&R 71/2010.

2 Eastern Cape Division, Case No. 127/07

3 At par 5

4 [1999] ZACC 1; 1999

(2) SA 667 (CC)

5 At G71 – H.

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