
SOUTH AFRICA / JUDGMENT

S v Blignaut and Others (CC19/2017) [2017] ZAECPEHC 55; 2018 (1) SACR 587 (ECP) (21 November 2017) [2017] ZAECPEHC 55

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

M Makaula

CASE / FILE NUMBER

CC19/2017

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE LOCAL DIVISION – PORT ELIZABETH

Case No: CC 19/2017

Date Delivered: 21/11/17

In the matter between:

THE STATE

and

MORNE BLIGNAUT

ACCUSED 1

MARSHELLE BLIGNAUT

ACCUSED 2

JACOB JOHANNES JACOBUS NAUMANN

ACCUSED 3

FREDERICK NANCE

ACCUSED 4

PETRUS LINDEQUE SMITH

ACCUSED 5

WILLIE NANCE

ACCUSED 6

HUANG ZHENYONG

ACCUSED 7

PAN KEKUN

ACCUSED 8

SENTENCE

MAKAULA J:

[1] The two accused's are Chinese Nationals who came and resided in the Republic of South Africa illegally. They have one previous conviction each for contravening the provisions of the Marine Living Resources Act 18 of 1998. They were both sentenced to thirty months imprisonment respectively. The accused have further two previous convictions relating to the contravention of the Immigration Act 13 of 2002 and were sentence to three and six months imprisonment on each count. All sentences were ordered to run concurrently.

Effectively the accused served a period of thirty months imprisonment in respect of the four previous offences.

[2] I convicted the accused of eight different offences involving a contravention of the Marine Living Resources Act 13 of 1998 (the Act) and Regulation 36(1)(a) of Regulation No 1111 published in Government Gazette 19205 dated 2 September 1998 on their plea of guilty.

[3] In their plea explanation in terms of section 112(2) of the Criminal Procedure Act 51 of 1977, the accused in a nutshell admitted the following:

3.1 That Oliphant's Kop farm was used as an illegal fish processing establishment;

3.2 That during their arrest they were found in possession of a total of 37 356 units of abalone which weighted in excess of six tons with an estimated value of R5 258 300. 00;

3.3 During the period July 2013 to August 2014, abalone, which was pouched and illegally collected along the South African shoreline mainly in the Port Elizabeth area, was illegally transported and kept at the above mentioned establishment where it was illegally processed and dispatched after being dried;

3.4 Various vehicles in particular a Nissan LDV and a Corsa LDV were amongst the vehicles used in transportation of abalone;

3.5 That at all relevant times they knew that they were employed by an enterprise for the purposes of processing abalone;

3.6 The purpose of the enterprise was to engage in the illegal fishing, collecting, keeping, controlling, processing, transportation of and possession of abalone without a permit, at an illegal processing establishment in Oliphant's Kop farm;

3.7 Part of their employment by the enterprise was to receive, possess, process, cook, dry and pack abalone at the illegal processing establishment for export;

3.8 That the affairs of the enterprise were manifested through racketeering activities being planned, ongoing, continuing and repeated involvement and participation in abalone related offences.

The accused therefore admitted all the elements of the offences they pleaded guilty to.

- [4] In an effort to give a background as well as aggravating factors, the State called the evidence of Warrant Officer Leon Martin Eksteen. He gave a brief background as to how he got to know, as a member of the Organised Crime Unit, that the farm was used as a store for unlawful processing of abalone. As a result of the information he investigated the matter and came to arrest the accused on the farm. He testified that the accused were found in possession of wet abalone which was green and brown in colour. The green abalone was harvested in the Western Cape, so he testified. That meant the processing establishment was not used for processing abalone from the Eastern Cape only. He further testified that he also found a room where the cooking and the processing of abalone occurred as depicted the photo album of the farm. He further confirmed that the accused were in South African illegally and also referred to their previous convictions in respect of the contravention of the Marine Living Resources Act and the Immigration Act. He testified that the living conditions of the accused were appalling as the place was unhygienic and very filthy. He confirmed that the accused were arrested on 11 November 2014 and sentenced on 17 November 2014. Since then they were detained at St Albans Correctional Services Centre.
- [5] Mr Kruger, on behalf of both accused, submitted their personal circumstances from the Bar. The accused did not testify in mitigation of sentence. He stated that accused 7 is 32 years. Accused 8 is 53 years. He submitted that both accused have been in custody for three years. They have no relatives in South Africa. They never had any visitation for the whole period as a result. He submitted that both of them came to South Africa illegally because they were promised a job in South Africa. They left China because of poverty and due to various personal circumstances. Accused 7 is married. His wife suffers from cancer. They had no money to finance her treatment, hence, I assume, he decided to take a bogus job in South Africa. It is so, because nothing of the kind of job promised to them materialised except to be hired to process abalone. He has two children and her parents are both pensioners earning a sum of R600.00 per month.
- [6] Accused 8 is a tailor by profession. He had to give up his career because of eyesight problems. He came to South Africa to look for better job opportunities. He was surprised to be taken to the farm to cook, dry and prepare abalone. Both lived on the farm since their arrival from China. They were not allowed to go out of the farm. They had no vehicle and no

access to town. They have been living on the farm and worked under the conditions as already described. All their personal necessities like food were brought to them on the farm. Mr Kruger, submitted that both of them have shown remorse by pleading guilty. They pleaded guilty even in the court which sentenced them without hesitation. He submitted that both accused are willing that they be deported at their own costs to China.

- [7] Mr Le Roux, on behalf of the State, was not opposed to the accused's being given suspended sentences and an order for their deportation at their costs.
- [8] Mr Kruger drew an analogy of a major store packer employee as compared to the directors thereof in explaining the role played by the accused in the enterprise. The packer is the last person in the store hierarchy and the salary he or she earns is commensurate with his or her work. The bulk of the profits are enjoyed by those high up. Similarly in this instance, the accused earned peanuts, so he submitted. That is borne out by their living conditions as depicted in the pictures and as confirmed by Warrant Officer Eksteen. They lived in horrific conditions. Warrant Officer Eksteen confirmed that accused 8 was emaciated at the time of arrest. His condition has since improved while in prison and he looked healthy, than before, so he testified. They joined the enterprise because of socio-economic conditions in their country of origin. It has to be noted that these offences are related to the previous convictions in that, at the time of conviction and sentence, it was not clear that the accused were involved in an enterprise which dealt in poaching illegal abalone and racketeering activities. Had that been known, the accused would have faced the current charges simultaneously with those they have served sentences in respect of.
- [9] The kind of offences the accused are convicted of have become prevalent in the area of Port Elizabeth, predominately, because of its coastal location. They are serious offences which need to be visited with harsh sentences to reflect the seriousness thereof. However, the nature and circumstances vary thus necessitating a differentiation in the sentences to be meted out. Proof of that, are the current circumstances of this case. The personal circumstances, the nature of the role played by the accused in the commission of these offences and the conditions that prevailed in the processing plant or establishment pertaining to the accused are relevant and should influence the kind of sentence I have to impose. The circumstances of this case are unique. However, the sentences should not send a wrong message. They have to reflect the seriousness thereof.
- [10] Section 3 of the Prevention of Organised Crime Act 121 of 1998 (POCA) stipulates that:
- "Any person convicted of an offence referred to in section 2(1) shall be liable to a fine not exceeding R1000 million, or to imprisonment for a period of up to imprisonment for life".*
- [11] Both accused have been convicted of contravening section 2(1) of POCA. The sentences are therefore applicable. It is the starting point. Having considered the circumstances of this matter, I however, sentence the accused as follows:

Count 1: The accused are sentenced to undergo ten (10) years imprisonment each wholly suspended for 5 (five) years on condition that the accused are not convicted of a contravention of section 2(1)(e) of the Prevention of Organised Crime Act 21 of 1998 during the period of suspension;

Count 4: The accused are sentenced to undergo 3 (three) years imprisonment;

Count 5: The accused are sentenced to undergo 3 (three) years imprisonment;

Count 6: The accused are sentenced to undergo 3 (three) years imprisonment;

Count 7: The accused are sentenced to undergo 3 (three) years imprisonment;

Count 8: The accused are sentenced to undergo 3 (three) years imprisonment;

Count 9: The accused are sentenced to undergo 3 (three) years imprisonment;

Count 10: The accused are sentenced to undergo 3 (three) years imprisonment.

9.1 It is ordered that the sentences in count 4, 5, 6, 7, 8, 9 and 10 shall run concurrently. It is further ordered that such sentences are wholly suspended for 5 (five) years on condition that both accused are not convicted of a contravention of Regulation 36(1)(a) of Regulation R1111 published in Government Gazette 19205 dated 2 September 1998 during the period of suspension;

9.2 It is ordered that the Department of Home Affairs should see to the deportation of both accused to their country of origin, the Republic of China in terms of section 49(12) of the Immigration Act 13 of 2002.

M MAKAULA

Judge of the High Court

For the State, Adv M Le Roux, Director of Public Prosecution, Port Elizabeth

For Accused 7 and 8, Mr JC Kruger, BDK Attorneys, Johannesburg (Private Instructions)

Date Heard: 20 November 2017

Date Delivered: 21 November 2017

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