

SOUTH AFRICA / JUDGMENT

S v King (CA&R 393/2014) [2014] ZAECHGC 109 (11 December 2014)

[2014] ZAECHGC 109

COURT

Eastern Cape High Court, Grahamstown

BEFORE

RWN Brooks, C Plasket

CASE / FILE NUMBER

CA&R 393/2014

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IN

THE HIGH COURT OF SOUTH AFRICA

ESTERN

CAPE HIGH COURT, GRAHAMSTOWN

CA&R:

393/2014

Date

delivered: 11 December 2014

In

the matter between:

THE

STATE

vs

REMANO

ELIA KING

REVIEW

JUDGEMENT

BROOKS AJ:

- [1] The accused pleaded guilty, in the Magistrate's Court, East London, to a charge of theft. In a written statement tendered in accordance with the provisions of s 112 (1)(b) of the Criminal Procedure Act 51 of 1977 (the CPA) the accused admitted that he misappropriated an amount of R75 156,00, being the property of his employer "Just on Cosmetics", which sum had erroneously been paid into his personal bank account.

[2] The magistrate was satisfied that all the elements of the offence were admitted in the statement and the accused was convicted

accordingly.

[3] No difficulties emerge from a consideration of the record with regard to the conviction. It is confirmed.

[4] The magistrate then imposed the following sentence:

The accused is to undergo 24 months imprisonment suspended for 5 years on condition that

(i) The accused is not again convicted of theft or attempted theft committed during the period of suspension;

(ii) In terms of s 300 of the CPA the accused is ordered to reimburse the complainant a sum of R61 156, 00.

[5] It is evident from the record of proceedings that the compensation award made by the magistrate in terms of s 300 of the CPA was made on the application of the prosecutor during his address on sentence. However, it is also evident that the prosecutor did not make it clear that in making the application he was acting on the instructions of the injured person, in this case the accused's employer, "Just On Cosmetics". Nor was the accused afforded an opportunity to lead evidence or address the magistrate on the application.

[6] Before an award of compensation can be made there must be an application after the conviction which emanates from the injured

person.[1]

[7] When the prosecutor brings the application it must be clear that he is acting on the instructions of the injured person.[2]

[8] The accused must be afforded the opportunity to address the court on the matter and to lead evidence.[3]

[9] It is plain that in making the award in terms of s 300 of the CPA, the magistrate failed to have regard to the three requirements

referred to in the preceding paragraphs. It cannot be said that the award was preceded by the exercise of his judicial discretion.

It follows that it must be set aside.

[10] I make the following order:

The sentence imposed by the magistrate on the accused is set aside to the extent that the following portion is deleted therefrom:

“(ii) in terms of section 300 of the CPA the accused is ordered to reimburse the complainant a sum of R61 156, 00.”

RWN BROOKS

JUDGE OF THE HIGH COURT (ACTING)

PLASKET J

I agree.

C. PLASKET

JUDGE OF THE HIGH COURT

- [1] S v Mjodo 1961 (4) SA 677 (E); S v Gathercole 1963 (2) SA 729 (N); S v Mokwakwa 1969 (2) SA 484 (O); S v Zulu 1972 (4) SA (N); S v Makhae en ‘n ander 1974 (1) SA 578 (O); S v Purdy 1975 (2) SA 671 (A); S v Msiza 1979 (4) SA 473 (T).
- [2] R v Mkize 1961 (2) SA 769 (D); S v Nkholise 1967 (3) SA 163 (E); S v Du Plessis 1969 (1) SA 72 (N); S v Fanie 1970 (2) SA 609 (E); S v Polman 1973 (3) SA 21 (C); S v Dunywa 1973 (3) SA 869 (E); S v Claassens en ‘n ander 1973 (4) SA 300 (O); S v Makhae en ‘n ander 1974 (1) SA 578 (O); S v Vanmali & another 1975 (1) SA 17 (N); S v Bepela 1978 (2) SA 22 (B); S v Msiza 1979 (4) SA 473 (T).
- [3] S v Maelane 1978 (3) SA 528 (T); S v Msiza 1979 (4) SA 473 (T) at 475 F-G.

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