

SOUTH AFRICA / JUDGMENT

S v Mamato and Others (A1006/99)

[2010] ZAGPPHC 634 (15 June 2010)

[2010] ZAGPPHC 634**COURT**

North Gauteng High Court, Pretoria

BEFORE

NB Tuchten, SS Omar

CASE / FILE NUMBER

A1006/99

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Source record**IN****THE NORTH GAUTENG HIGH COURT****(REPUBLIC****OF SOUTH AFRICA)****CASE****NO: A1006/99****DATE:**

15 JUNE 2010

NOT

REPORTABLE

In

the matter between:

THE

STATE

and

PATRICK

MAMATO.....First

Accused

DAVID

RADITSELA.....Second

Accused

JOHN

MORALO.....Third

Accused

MATTHEWS

MOLOTANE.....Fourth

Accused

JOSEPH

MAKWANAZI.....Fifth

Accused

MOSES

BEKHETE.....Sixth
Accused

JUDGMENT

1 The appellants appeal against their convictions and their sentences imposed by a regional magistrate who sat with assessors in

Christiana. The appellants were convicted of three counts of robbery with aggravating circumstances, unlawful possession of firearms and ammunition and escaping from custody.

2 Counsel for the appellants has correctly conceded that on the facts, and subject to one qualification with which I shall deal below, the appellants were correctly found to have committed the acts with which they were charged.

3 I shall therefore say little about the convictions themselves. The charges arise out of a bank robbery. The appellants were members of a gang which robbed the Volkskas Bank in Christiana and, in order to obtain a getaway vehicle, robbed a woman on the scene of her Honda Ballade together with her keys, R120 cash and her handbag.

4 It appears that the notices of appeal were all filed out of time. The appellants apply for condonation. Their condonation applications are not opposed and the reasons for the lateness are adequately explained. The appellants are in prison. The condonation applications will therefore be granted.

5 On behalf of the 6th appellant it is submitted that the regional magistrate committed a gross irregularity in failing to accede to a request by his legal representative for further time to prepare to continue with the proceedings.

6 The facts are fully dealt with by the regional magistrate in his

judgment:

6.1 The accused were all arrested on 13 October 1997 and escaped from the police cells on 19 October 1997.

6.2 They were rearrested on different dates; the 6th appellant was the last to be rearrested, on 12 December 1998.

6.3 The case then had to be postponed from time to time as further accused were reapprehended and joined to the proceedings. The case was eventually set down for hearing on 8 September 1998, for three days, against the first five appellants. On that date, numerous state witnesses were present but the 1 st to 5th appellants had not secured legal representation. They were given until the following day to do so. No legal representative appeared on any of the three days for which the case was set down.

6.4 The case was then postponed to 9 November 1998 but on that date no legal representative appeared for any of the appellants. The case was postponed to 10 December 1998. Once again, no lawyer appeared and the case was again postponed.

6.5 Thereafter the 6th appellant was joined. He had, as I have mentioned, been rearrested. The sixth appellant asked for two weeks to obtain legal representation. The case was postponed for trial on 2, 3, 4 and 5 February 1999.

6.6 The regional court's roll permits cases for outside courts such as Christiana, Schweitzer Renecke, Bloemhof and Wolmaransstad to be set down for only eight days in a month in total. The postponements of the present case caused considerable dislocation to the administration of justice because the time allocated for the hearing of the case was simply wasted to the great detriment of the public and accused persons, particularly those in custody.

6.7 On 2 February 1999, an attorney, Mr von Drunick presented himself at court to represent the 6th appellant. This attorney had apparently been instructed on 18 January 1999 and had, some time before 21 January 1999, written a letter to the prosecutor to ask for the charge sheet and statements and received no reply. There the attorney was content to let the matter rest. The prosecutor denied having received the letter.

6.8 The attorney asked for more time. The regional magistrate was prepared to give him until 11 h45 on the same day. To have given von Drunick the lengthy postponement he sought, the regional magistrate considered, would bring the system of justice into disrepute. He had regard to the demoralising effect of constant postponements on state witnesses and the expressed desire of all the other appellants to continue with the proceedings.

6.9 The attorney then withdrew from the proceedings after which he consulted again with the 6th appellant. When the court reconvened,

the 6th appellant stated that he would take no part in the proceedings. It appears from the record that he in fact did not do so. After he declined to plead, a plea of not guilty to all charges was correctly entered on his behalf.

7 Can it be said that under these circumstances, the right of the 6th appellant to a fair trial was violated? I do not believe that it can.

Counsel submitted that the regional magistrate might have given von Drunick until the following day to prepare, rather than until later on the same day. But von Drunick did not ask for one day's grace. He asked for the trial to be postponed, impliedly until much later. Counsel submits that the 6th appellant was not responsible for the earlier delays. This submission would have more force if the 6th appellant had been brought to justice for the first time in December

1998. But that was not the case. He had been at large for some 14 months before he was rearrested, in which time, needless to say, he had done nothing about preparing for the eventuality that he might in the future be required to account for his deeds.

8 Ultimately, a decision to grant or refuse a postponement is in the discretion of the judicial officer presiding. The regional magistrate took into account all relevant factors for and against granting the postponement. In coming to his conclusion, he weighed, as he was required to do, the constitutional rights of the other accused, the state and the public together with those of the 6th appellant. In my judgment he cannot be faulted in the exercise of his discretion.

9 The appeals against the convictions must therefore be dismissed. I turn to the sentences imposed.

10 The attack on the sentences is directed essentially at their cumulative effect. The sentence imposed on the 3rd, 5th and 6th

appellants was an effective 17 years in prison while that imposed on the 1st, second and 4th appellants was 32 years imprisonment.

11 The appellants were members of an armed gang who subjected innocent members of the community to what must have been a terrifying

experience. In such a case the element of deterrence must loom large.

12 In my view the 3rd, 5th and 6th appellants were lucky to have got off so lightly. The 1st, second and 4th appellants received more severe sentences because of their relevant previous convictions. I am unable to agree that their sentences were inappropriately severe. The appeals against sentence can therefore not succeed.

13 I make the following order:

13.1 The late delivery of the notices of appeal is condoned;

13.2 The appeals of each of the appellants against conviction and sentence are dismissed and the convictions of and sentences imposed upon each of the appellants is confirmed.

NB Tuchten

Judge of the High Court

15 June 2010

I agree.

SS Omar

Acting judge of the High Court

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