

SOUTH AFRICA / JUDGMENT

S v Milisi (CC42/2016) [2016] ZAE CGHC 150 (27 October 2016)

[2016] ZAE CGHC 150

COURT

Eastern Cape High Court, Grahamstown

BEFORE

C Plasket

CASE / FILE NUMBER

CC42/2016

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IN

THE HIGH COURT OF SOUTH AFRICA

EASTERN

CAPE DIVISION, GRAHAMSTOWN

Case no.CC 42/2016

Date heard: 26/10/16

Date delivered:

27/10/16

Not

reportable

In

the matter between:

THE

STATE

and

MHLABUNZUMA

MILISI

JUDGMENT

PLASKET, J:

- [1] The accused was charged with the offence of rape. The indictment, to which he pleaded not guilty, stated that ‘between 2014 and 26 January 2015 and at or near Tyoksville, Dordrecht in the district of Dordrecht, the accused did unlawfully and intentionally commit acts of sexual penetration with the complainant, NM, a 9 year old girl, by having sexual intercourse with her on diverse occasions per vaginam and per anum against her will and without her consent’.

[2] The State called four witnesses, including the complainant. The first witness, Sister Buyiswa Ngotyana, a forensic nurse, examined the complainant on 28 January 2015. She found both fresh wounds to the complainant's genitals and anus, as well as older wounds that were, like the fresh wounds, indicative of her having been subjected to sexual penetration. The complainant testified to having been raped vaginally on three occasions when she had been sent by her grandmother to the accused's house on errands. On the final occasion, she had reported what had happened to her to a witness who was nearby who called social workers, setting in motion the events that led to the arrest and trial of the accused.

[3] When the accused testified, he initially denied having raped the complainant and instead put up a version that can only be described

as bizarre and clearly mendacious. At the end of his cross-examination, however, he confessed to having raped the complainant on three occasions, as she had testified. He repeated his confession in re-examination.

[4] I am satisfied that the accused's guilt has been proved beyond reasonable doubt, subject to one qualification: the evidence only establishes that the complainant was penetrated vaginally.

[5] Subject to that qualification, I find the accused guilty as charged.

C Plasket

Judge of the High Court

APPEARANCES:

For the State: Ms Hendricks, office of the Director of Public Prosecutions, Grahamstown

For the accused: Mr Solani, Grahamstown Justice Centre

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