

SOUTH AFRICA / JUDGMENT

S v Ngceni (CA&R: 176/2015)

[2015] ZAECGHC 69 (7 July 2015)

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COURT

Eastern Cape High Court, Grahamstown

BEFORE

P.W. Tshiki, G.H. Bloem

CASE / FILE NUMBER

CA&R: 176/2015

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION, GRAHAMSTOWN

CA&R: 176/2015

DATE: 07 JULY 2015

In the matter of:

THE STATE

Vs

AMANDA NGCENI

REVIEW JUDGMENT

Review no: 2015088

Date delivered: 7.7.2015

TSHIKI J:

- [1] In this matter, the accused appeared before the Magistrate's Court in East London on a charge of fraud and was represented by an attorney. She pleaded guilty to the charge wherein she admitted to fraudulently stolen a sum of R21 750.00 from the complainant and was convicted as charged on her plea of guilty. She was sentenced as follows:

“12 months (sic) imprisonment suspended for 4 years on condition that accused is not again convicted of fraud of (sic) theft, committed during the period of suspension, and where sentenced to unsuspended imprisonment, without the option of a fine. In terms of section 300 Act 51 of 1977 the accused repay the amount of R21 750.00 to the complainant, Kholeka Jingana. Not unfit to possess a firearm.”

- [2] Insofar as it is relevant to this matter section 300 of the Criminal Procedure Act 51 of 1977 (the CPA) provides as follows:

“(1) Where a person is convicted by a superior court, a regional court or a magistrate's court of an offence which has caused damage to or loss of property (including money) belonging to some other person, the court in question may, upon the application of the injured person or of the prosecutor acting on the instructions of the injured person, forthwith award the injured person compensation for such damage or loss: Provided that-

- (a) a regional court or a magistrate's court shall not make any such award if the compensation applied for exceeds the amount determined from time to time by the Minister by notice in the Gazette in respect of the respective courts.

(b) ...

- (2) For the purposes of determining the amount of the compensation or the liability of the convicted person therefor, the court may refer to the evidence and the proceedings at the trial or hear further evidence either upon affidavit or orally.

(3) ...

(4) ...

(5) ... ” (My emphasis)

- [3] For the Court to make an order of compensation or restitution against the accused he or she must have been convicted of an offence which has resulted in damage or loss of property which can be calculated in monetary value. [S v Crane 1994

- (2) SACR 197 (C)]. The injured person must, after conviction, have made an application for compensation, such compensation to be made by the convicted person. In that case the public prosecutor must bring the application on behalf of the injured person who suffered as a result of the offence committed by the convicted person [S v Mgabhi 2008 (2) SACR 377 (D)].

- [4] The request by the complainant must have been made before the order is granted.

- [5] The purpose for the application in terms of section 300 of the CPA is to assist the applicant who must normally be put in a position he or she would have been in had the misrepresentation or loss not been made. If necessary oral evidence would have to be led in such enquiry.

- [6] In the present case, the accused person was ordered to compensate the complainant at the instance of an application by the public prosecutor. It transpired later after the Court had made the order of compensation that the public prosecutor had not been instructed by the injured person to make an application for compensation on her behalf. The provisions of section 300 of the CPA clearly state that it must be clear from the evidence led that the public prosecutor was acting on the instructions of the injured person [S v Nkolise 1967 (3) SA 163

(E), *S v Dunywa* 1973 (3) SA 869 (E)]. In this case, there was no request by the injured person for compensation and therefore, the order could not stand.

[7] I must also comment, as will appear *infra*, this mode of compensation by way of invoking the provisions of section 300 of the CPA is discouraged by Terblanche on *Guide to Sentencing in South Africa* 2nd ed (2007) 405 who says that the Courts should rather make use of the provisions of section 297 of the Act which provides for the imposition, in deserving cases, of compensation as part of the punishment, as a suspensive condition to the sentence. [*S v Khoza* 2011 (1) SACR 482 (GSJ) at para [10]].

[8] Therefore, I agree with the magistrate that the order in terms of section 300 of the CPA should be set aside.

[9] Therefore, I make the following order:

[9.1] The conviction of the accused is hereby confirmed.

[9.2] The sentence imposed on the accused is hereby confirmed, save that order granted by the Court *a quo* instructing the accused to repay the amount of R21 750.00 to the complainant Kholeka Shirley Singana is hereby set aside.

P.W. TSHIKI

JUDGE OF THE HIGH COURT

Bloem J:

I agree.

G.H. BLOEM

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