

SOUTH AFRICA / JUDGMENT

S v Sefume (R43/2021) [2021] ZAFSHC 192 (22 July 2021)

[2021] ZAFSHC 192

COURT

Free State High Court, Bloemfontein

BEFORE

P. J. Loubser, J. J. F. Hefer

CASE / FILE NUMBER

R43/2021

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IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Review number: R43/2021

In the matter between:

THE STATE

and

THABISO SEFUME

CORAM: LOUBSER, J et HEFER, AJ

JUDGEMENT BY: LOUBSER, J

DELIVERED ON: 22 JULY 2021

- [1] This matter came before me in terms of the provisions of Section 304(4) of the Criminal Procedure Act 51 of 1977. It was referred for a review by the Senior Magistrate and Sub Regional Head of Kroonstad, and it pertains to the proceedings against the accused that were held in the Parys Magistrate's Court on 7 October 2020. On that day, the accused was charged with a contravention of Section 17 of the Domestic Violence Act 116 of 1998. He pleaded guilty to the charge and was sentenced to pay a fine of R500 or to undergo three months imprisonment. He was also declared unfit to possess a firearm.
- [2] Subsequent to the plea of guilty, the legal representative of the accused handed in a written statement by the accused in terms of Section 112(2) of the Criminal Procedure Act (CPA). On the strength of this statement, the trial magistrate convicted and sentenced the accused.

[3] In his referral, the Senior Magistrate raises three points of concern. They are the following:

“1. The written statement in terms of Section 112(2) of the CPA by the accused or any part of the record does not indicate that the accused was aware of the existence of the domestic violence protection order against him and that same was still in force.

2. The said statement in terms of Section 112(2) of the CPA or any part of the record does not show that the accused admits all allegations on the charge sheet. Accused’s statement only admits to insulting the complainant but fails to admit the threat by the accused to kill the complainant.

3. The record does not show the inquiry in terms of Section 103 of Act 2000 being held; nonetheless the court determines the accused to be unfit to possess a firearm.”

[4] Before dealing with these points of concern, it is apposite to refer to the contents of the charge sheet, which was read out to the accused before he was asked to plead thereto. He was charged with a contravention of Section 7(1) read with Section 17 of the Domestic Violence Act 116 of 1998.

[5] It is further alleged in the charge sheet that the accused, on or about 13 July 2020 and at or near Parys, did unlawfully and intentionally contravene the protection order issued by the Magistrate of Parys on 26 June 2020 with number 29/19, which was duly served on him on 26 June 2020. It is stated in the charge sheet that the order prohibited

or directed the accused not to assault or threaten Julia Nthokoane, or to swear at her. It is further stated that the order was still valid and that the accused on 13 June 2020 threatened to kill the complainant.

[6] It is to this charge that the accused pleaded guilty. The relevant parts of this Section 112 statement read as follows:

“I further understand the nature of the charges against me and plead guilty to the charge of domestic violence: contravening the conditions of domestic violence order. I admit that on the 13/07/20 in the district of Parys I did unlawfully and intentionally swear at Julia Nthokoane. The circumstances surrounding the commission of the offence are as follows: On the day in question, my mother and I were sitting and talking in the bedroom. I asked her for R10. She insulted me and told me all I do is ask for money. I was hurt. We then got into an altercation and I swore at her contravening the protection order. I acted wrongfully towards my mother, I love her, I was just hurt when she insulted me. I admit that I was in contravention of the protection order and was in violation of the terms of the protection order. I admit that my conduct is unlawful and punishable by law. I admit that at all times I was aware that my actions were a criminal offence punishable by this Honourable Court. I have no valid defence for my actions and to the charge. I ask the Honourable Court to show mercy to me when passing sentence.”

- [7] I now turn to the first point of concern mentioned above. I respectfully disagree with the learned Senior Magistrate on this point. A simple reading of the Section 112 statement makes it clear that the accused was aware of the existence of the domestic violence protection order against him and that same was still in force. This is particularly borne out by the following phrases in the statement in question: "I swore at her contravening the protection order. I admit that I was in contravention of the protection order and was in violation of the terms of the protection order. I admit that my conduct is unlawful and punishable by law. I admit that at all time I was aware that my actions were a criminal offence punishable by this Honourable Court. I have no valid defence for my actions and to the charge."
- [8] In my view, there is no way in which those phrases can be interpreted as meaning that the accused was not aware of the existence of the protection order and that such order was still operative.
- [9] The transcribed record of proceedings shows that the trial magistrate did not question the accused on any aspect of his statement. It was clearly not necessary. Section 112(2) of the CPA provides that where a statement such as the present one is handed into court, the court may, in lieu of questioning the accused under subsection 1(b), convict the accused on the strength of such statement, and sentence him if the court is satisfied that the accused is guilty of the offence to which he has pleaded guilty. The court may then convict the accused on his plea of guilty. This is obviously what happened here, and the trial magistrate was perfectly entitled to convict the accused on his statement as far as the first point raised by the Senior Magistrate is concerned.
- [10] As for the second point, I am also in respectful disagreement with the Senior Magistrate. It is true that the accused specifically pleaded guilty of swearing at his mother, while he was accused of threatening to kill her in the charge sheet. However, in terms of Section 7(1)(h) of the Domestic Violence Act, the court granting the protection order, may prohibit the respondent from committing any other act as specified in the protection order. In the present case, the accused was prohibited from assaulting or threatening the complainant, or from swearing at her. When the accused pleaded guilty to the swearing at his mother, he therefore correctly pleaded guilty to a violation of the protection order. In addition, when the accused pleaded as such, the trial magistrate asked the prosecutor whether he accepted the plea of guilty as it was tendered by the accused in his statement. The prosecutor answered in the affirmative, thereby abandoning the allegation of threatening to kill and accepting that the accused did no more than swear at the complainant. Such admission by the accused still placed him in a position where he could be committed of violating the protection order in question. The accused was therefore correctly convicted by the court.
- [11] The third point of concern raised by the Senior Magistrate calls for an interpretation of the Firearms Control Act 60 of 2000. In terms of Section 103(1)(l) of this Act, a person becomes unfit to possess a firearm, unless the court determines otherwise, if he is convicted of any offence in terms of the Domestic Violence Act 116 of 1998 in respect of which the accused is

sentenced to a period of imprisonment without the option of a fine. In the present case, the accused was sentenced to imprisonment with the option of a fine, with the consequence that he could not be declared unfit to possess a firearm after he was sentenced without any further ado.

- [12] Section 103(2)(a) of the Act provides that a court which convicts a person of a crime or offence referred to in Schedule 2 and which is not a crime or offence contemplated in Section 103 (1), must enquire and determine whether that person is unfit to possess a firearm. In Schedule 2(7)(b) any crime or offence in terms of the Domestic Violence Act 116 of 1998 in respect of which an accused was not sentenced to a period of imprisonment without the option of a fine, is listed, amongst others. The present crime or offence therefore falls within the ambit of Section 103(2)(a), because the accused was not sentenced to a period of imprisonment without the option of a fine.
- [13] The Senior Magistrate is therefore correct in his view that the trial magistrate was not empowered to declare the accused unfit to possess a firearm without an enquiry and a subsequent determination.
- [14] Since the provisions of Section 103(2)(a) are mandatory, this aspect will have to be referred back to the trial court for the enquiry and determination in question.
- [15] The following orders are made:
1. The conviction and sentence of the accused for a contravention of Section 17 of the Domestic Violence Act 116 of 1998, is confirmed.
 2. The order made by the trial magistrate declaring the accused unfit to possess a firearm, is reviewed and set aside.
 3. The question whether the accused is unfit to possess a firearm, is remitted to the trial court for an enquiry and determination in terms of Section 103(2)(a) of the Firearms Control Act 60 of 2000.

P. J. LOUBSER, J

I concur:

J. J. F. HEFER, AJ

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