

SOUTH AFRICA / JUDGMENT

S v Shinyakanyaka (93/2017) [2017] ZALMPTHC 14 (1 November 2017)

[2017] ZALMPTHC 14**COURT**

Limpopo High Court, Thohoyandou

BEFORE

M Madima, N F Kgomo

CASE / FILE NUMBER

93/2017

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****LIMPOPO****DIVISION, THOHOYANDOU****REVIEW****CASE NO: 93/2017****DATE:**

01/11/2017

In

the matter between:

THE

STATE

And

COLLEN

SHINYAKANYAKA

Accused

REVIEW

JUDGMENT**M MADIMAAJ**

- [1] The accused was arraigned in the magistrates' court of Malamulele held at Senwamokgope on a charge of 'theft' of the following items: 1 x plain decker machine, 1 x drill decker machine, 1 x grander machine, 1 x wooden hammer and 2 colgates (total property valued at two thousand and eighty two rand (R2082-00)). He was also charged with an alternative charge of

contravening section 1 of the General Law Amendment Act 50 of 1956 (Act 50 of 1956), a charge colloquially termed by the state

'unauthorised borrowing'. Section 1 of Act 50 of 1956 reads:

"(1) Any person who, without a bona fide claim of right and without the consent of the owner or the person having control thereof, removes any property from the control of the owner or such person with intent to use it for his own purposes without the consent of the owner or any other person competent to give such consent, whether or not he intends throughout to return the property to the owner or person from whose control he removes it, shall, unless it is proved that such person, at the time of the removal, had reasonable grounds for believing that the owner or such other person would have consented to such use if he had known about it, be guilty of an offence and the court convicting him may impose upon him any penalty which may lawfully be imposed for theft.

(2) Any person charged with theft may be found guilty of a contravention of subsection (1) if such be the facts proved"

The above alternative charge was in respect of the same properties as in the main count of theft.

[2] The court proceedings were recorded by longhand, and this is after it was reported that the recording machine had technical problems. The accused was informed of his right to legal representation by a lawyer of his choice or a lawyer from Legal Aid South Africa if he had no money or had money but insufficient to pay legal fees. The accused made an informed choice to conduct own defence and the trial court cannot, for that choice, be faulted.

[3] Initially the accused pleaded guilty to the charge of theft, but after an enquiry by the learned magistrate in terms of section 112

(1) (b) of the Criminal Procedure Act 51 of 1977 (Act 51 of 1977), it became evident that he (accused) did not admit all the elements of the main charge but an alternative charge. In the light of the above the accused was found guilty on the above alternative charge and sentenced to twelve (12) months imprisonment which was wholly suspended for a period of three (3) years with certain conditions.

[4] The learned magistrate gave both the state and the accused opportunity, as required by law, to place before him all the important facts before proceeding to pass sentence. Therefore the learned magistrate was favoured with the relevant facts for purposes of meting out a sentence and also, for this reason, well placed to impose the above sentence which I consider appropriate in the circumstances.

[5] It is my considered view that the learned magistrate substantially complied with the trial procedures to ensure that the accused faced a fair trial. There is nothing assailable in these proceedings as such. Therefore the proceedings were in accordance with justice.

[6] In view of the above discussion I propose the following order:

ORDER

[7] The conviction and sentence herein are confirmed.

M MADIMA

ACTING JUDGE OF THE HIGH COURT

I agree and it is so ordered

N F KGOMO

JUDGE OF THE HIGH COURT

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