

SOUTH AFRICA / JUDGMENT

S v Sidawu (71/2016) [2016] ZAGPJHC 258 (22 August 2016) [2016] ZAGPJHC 258

COURT

South Gauteng High Court, Johannesburg

BEFORE

Satchwell, Moshidi

CASE / FILE NUMBER

71/2016

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

Case

number: 71/2016

In the

matter between:

THE
STATE
and
GIDEON
SIDAWU
Accused
REVIEW

JUDGMENT

SATCHWELL J:

INTRODUCTION

1. Gideon Sidawu was accused number two in a long running trial involving serious charges. On 18th April 2016, this accused was informed that his trial would have to be postponed yet again by reason of the illness and therefore the absence of his legal representative. The accused was most unhappy with the proposed postponement, insisted the matter be finalised and called the presiding officer a liar and refused to leave the witness stand.

2. At issue is the automatic review of a finding of contempt of court and sentence imposed of four months imprisonment. The procedure was that provided for in terms of section 108 of the Magistrates Court Act no 32 of 1944.
3. I am indebted to the office of the Director of Public Prosecutions at Johannesburg which prepared a detailed memorandum at the request of an earlier judge who was seized of this review but who is not presently available.
4. Strictly speaking the procedure followed by the learned magistrate was correct – he informed the accused that he believed the accused to have committed contempt of court and explained the charge to him, detailed the summary procedure which could be followed and the options available to the accused, accepted that the accused did not want legal representation and wanted to conduct his own case, allowed the accused an opportunity to respond to the charge.
5. Accordingly, on review I cannot fault the learned magistrate. However, I would have preferred it if the learned magistrate had informed the accused of the charge of contempt and then postponed the matter to the date when the legal representative was available so that the accused would have had an opportunity to cool down (and perhaps the learned magistrate as well) and perhaps the accused might have apologised to the court.
6. The sentence imposed was that of four months imprisonment. This is on the higher end of the permitted maximum allowed in terms of section 108 of the Act. It is not even imposed as an alternative to a fine.
7. I think the court failed to have regard to the long running nature of the trial which was taking place, the many and inexcusable postponements which had happened in the past, the disappointment of the accused at apparently being left in the lurch by the non-appearance of his legal representative. All these are mitigating factors. Nothing was planned or prepared. The accused was a victim of circumstances.
8. I would have either postponed the matter for the availability of the legal representative or, if the matter was summarily dealt with, I would have sent the accused to the cells to cool his heels for some hours. The office of the DPP has suggested that the sentence of four months imprisonment should be set aside and substituted with a sentence of R 500 (five hundred Rand) or 2 months imprisonment.
9. Regrettably, that is not a possibility. The record indicates that the accused was sentenced to four months imprisonment on 16th or 18th May 2016. The court file apparently only came before Coppin J towards the end of that month. The opinion of the DPP is dated 17th June 2016. It only arrived, with the record, at my chambers today which is the 22nd August 2016.

10. The court file indicates that the accused was not released. He has therefore served his sentence of four months imprisonment. I cannot ascertain whether or not the accused was in custody as an awaiting trial prisoner in respect of the other matter or not. But it is of no moment. According to the documents before me the accused was sentenced to serve a sentence of four months imprisonment and this has been done. I will therefore impose no other sentence.
11. In the result:
 - a. The contempt of court charges and proceedings against the accused are reviewed and reluctantly upheld.
 - b. The sentence of four months imprisonment is set aside and a sentence of ten days imprisonment is imposed and the following is substituted:

“ten days imprisonment to be served from 18th April 2016” which has now been served.

DATED AT JOHANNESBURG 22nd AUGUST 2016

SATCHWELL J

MOSHIDI J

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