

SOUTH AFRICA / JUDGMENT

S v Sikhosana (265/17, 02/17, 185/2015) [2017] ZAGPPHC 701 (10 October 2017)

[2017] ZAGPPHC 701

COURT

North Gauteng High Court, Pretoria

BEFORE

D S Molefe, N P Mali

CASE / FILE NUMBER

265/17

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IN

THE GAUTENG DIVISION HIGH COURT, PRETORIA

(REPUBLIC

OF SOUTH AFRICA)

High

Court Ref no: 265/17

Magistrate's

Serial no: 02/17

Case

Number: SH 185/2015, A519/17

Date: 10/10/2017

In

the matter between:

THE

STATE

AND

JABULANI

JOSEPH SIKHOSANA

REVIEW

JUDGMENT**MOLEFE J**

- [1] This matter was placed before the Court as a special review in terms of section 304 (4) of the Criminal Procedure Act 51 of 1977.
- [2] The accused was arraigned in the regional court, Sebokeng on two counts: one count of contempt of court and one count of trespassing. He pleaded not guilty to both counts. He was legally represented.
- [3] The allegations against the accused is that on 13 April 2014, he violated the provisions of a court order issued by the Sebokeng Magistrate Court on 17 December 2013, by remaining at erf [...] Sebokeng, Unit [...] ("the property" / "premises") in violation of the court order which ordered him to vacate the said premises before 17 January 2014 (count 1). Furthermore, in that on 13 April 2014, the accused entered the premises without the permission of the new purchaser, Mr Arnold Mthembu (count 2).
- [4] The background of this matter is that the accused bought the property and a mortgage bond was registered over the property by Nedbank Limited. The accused was allegedly owing Nedbank and after obtaining judgment and execution against the accused's property, Nedbank attached the accused's property and sold it in execution at an auction. The new purchaser of the property evicted the accused from the property by a court order issued by the Sebokeng magistrate court on 17 December 2013.
- [5] The accused refused to vacate the premises and was later evicted by the sheriff who served him with a warrant of eviction. The sheriff took out the accused's property from the premises and changed the locks to the doors and the new keys were given to the new purchaser after the accused's eviction. The accused later on that day broke the doors to the premises and returned to occupy the premises. The new purchaser laid criminal charges of contempt of court and trespassing against the accused.
- [6] The accused was convicted as charged on 16 May 2017. After the conviction but prior to the sentencing, a letter dated 6 June 2017 was sent to the presiding Magistrate by Nedbank Deceased Estate Manager which inter alia read as follows:

"Estate late: J J Sikosana

Home Loan Account: [...]

Security Description: Erl [...] Unit [...] Ext [...] Sebokeng

Nedbank Limited after extensive investigation has come to the conclusion that it would not be in our client's interests if the sale in execution that was previously carried out in the above property be endorsed by the bank. Nedbank strives to provide excellent client service to the best of our ability and after careful consideration we wish to advise that we are not in support of the sale in execution.

We therefore concluded that the sale will be reversed whereby Nedbank will reimburse the purchaser the full purchase price of the immovable property and will take liability for the difference absolving the client from any and all liability".

[7] On receipt of the above-mentioned letter from Nedbank, the regional court Magistrate, Sebokeng sent the matter to the reviewing Judge with a request for special review in a letter which inter alia reads as follows:

"It was only after conviction that the bank wrote to us, the bank refers to accused as the late J J Sikosana yet the man is alive and has been convicted. . . .

The truth of the subject is that the accused person in this matter is not owing the bank. There was no basis for all the civil litigation against him by the bank. . . .

The bank should not have sold the property that does not belong the bank. As regards trespass, accused cannot trespass on his own property.

I am of the view that these proceedings were not in accordance with justice, the truth was not revealed until after conviction".

[8] Apart from the statutory powers to review the proceedings of a lower court in terms of section 24 of the Supreme Court Act 59 of 1959 and section 304 of the Criminal Procedure Act 51 of 1977, the High Court has inherent jurisdiction to correct errors occurring in the proceedings before the lower court.

[9] In *S v Lubisi*[1], the court held that the inherent power to correct proceedings of a lower court at any stage should be exercised if it will be in the interest of justice.

Similarly in *S v Masiya and Others*[2] the court decided to intervene in the pending proceedings before the lower court because serious injustice would result if it did not intervene. In *S v Mathemba*[3], the High Court reviewed the pending proceedings in the lower court to prevent grave injustice.

[10] The undisputed facts are that indeed the accused should never have been charged and/or convicted as the bank admitted to have made error in obtaining judgment and selling his property in execution at an auction and have subsequently concluded to reverse the sale. I am therefore of the view that justice and fairness require that the conviction of the accused should be set aside.

[11] In the result I make the following order:

1. The proceedings of the court a quo are not in accordance with justice.
2. The conviction of the accused in the regional court Sebokeng, case SH 185/15 is set aside.

D S MOLEFE

JUDGE OF THE HIGH COURT

N P MALI

[1] 1980

(1) SA 187 (T)

[2] 2013

(2) SACR 363 (GNP)

[3] 2002

(1) SACR 407 €

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