

SOUTH AFRICA / JUDGMENT

Shongwe v S (A171/2018) [2019] ZAGPPHC 633 (10 October 2019)

[2019] ZAGPPHC 633

COURT

North Gauteng High Court, Pretoria

BEFORE

AC Basson, JJ Strijdom

CASE / FILE NUMBER

A171/2018

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REPUBLIC OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

(1)

REPORTABLE:

NO

(2)

OF

INTEREST TO OTHER JUDGES: NO

(3)

REVISED.

10/10/2019

CASE

NO: A171/2018

In

the matter between:

GREGORY

MANDLAKAVISE SHONGWE

Appellant

and

THE STATE

Respondent

JUDGMENT

AC BASSON, J

[1] The appellant was convicted on one count of fraud[1] in the Magistrates Court for the District of Tshwane held at Atteridgeville. He was sentenced to a fine of R 10 000.00 or undergo

12 months' imprisonment wholly suspended for a period of three years on condition that he is not convicted of fraud or theft committed

during the period of suspension.

[2] The appellant filed for leave to appeal against his conviction but it was refused. The matter serves before us after this court granted the appellant leave to appeal on petition.

[3] In the charge sheet it is alleged that the appellant unlawfully, falsely and with the intent to defraud gave out and pretended to the complainant (Mr George Makhubela) that he was the owner of a stand (house) identified as BB10, Maunde Street, Atteridgeville and that he would lease the property to the complainant at the payment of R 5 000.00 per month. Despite initial confusion, it later became common cause that the stand number BB10 actually referred to a structure on this stand (the Supermarket structure BB10) and not to the stand itself. Put then in context, the charge then is that the appellant had represented that he was the owner of the structure (the Supermarket BB10) whilst he was not and, based on this misrepresentation, a lease agreement was concluded.

[4] The complainant testified that he saw the vacant shop (BB10) and that he then expressed an interest to rent the shop. He met with the appellant. An agreement was then reached that the complainant will rent BB10 for 12 months. The complainant informed the appellant that he wished to use BB10 as a tavern. At that time the complainant did not have a liquor licence. A document was then given to the complainant (Annexure C) whereby the appellant stated that he was the owner of BB10 and that he gave the complainant permission to conduct business on the premises. The complainant never obtained a liquor licence. The parties also concluded an agreement whereby the appellant would buy the complainant's house.

[5] The main finding of the Magistrate was that the appellant had the necessary intention to defraud the complainant by misrepresenting to the complainant that he was the owner of the property. This conclusion is premised on a finding that the appellant was not the owner of the structure on stand BB10. The evidence before the court does not, however, substantiate this finding. Mr Mathabatha,[2] the third witness for the state, confirmed in his evidence that he and the appellant were the two co owners of the building. If that is so, at the very least there should have been reasonable doubt whether state discharged its onus of proof in respect of whether the appellant had the required intention to misrepresent.

[6] On a conspectus of the evidence, I am therefore not persuaded that the state has proven beyond a reasonable doubt all the elements of the crime.[3] The evidence regarding a misrepresentation is, to say the least, flimsy. Firstly, it was common cause that the appellant informed the complainant that he did not have a title deed of the property. Secondly, although the Magistrate placed a great deal of emphasis on Annexure C ("Declaration of ownership"), in terms of which the appellant declared that he was the owner of the property, the complainant conceded that the document was furnished to him merely in order for him to obtain a liquor licence which he needed to open up a tavern. Lastly, as already pointed out, the Magistrates finding that the appellant was not the owner of the property, is not consistent with the evidence of the third state witness who confirmed this fact.

[7] In the circumstances I propose the following order:

The appeal succeeds and the conviction is set aside and replaced with the following order:

"The accused is found not guilty."

AC BASSON, J

JUDGE OF THE HIGH COURT

I AGREE

JJ STRIJDOM, AJ

APPEARANCES:

FOR THE APPELLANT : ADV JLW KOK

INSTRUCTED BY : KLAGSBRUN EDELSTEIN BOSMAN DE VRIES

FOR THE DEFENDANT : ADV MJ MAKGWATHA

INSTRUCTED BY

: DIRECTOR OF PUBLIC PROSECUTIONS

[1] Fraud is the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another.

[2] There was some confusion about the name of the third state witness. I will refer to him as Mr Mathabatha.

[3] The elements of the crime are the following: (a) a misrepresentation; (b) prejudice or potential prejudice; (c) unlawfulness and (d) intention.

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Prepared on 10 October 2026 · Esheria