

SOUTH AFRICA / JUDGMENT

Sizani v S (A530/2012) [2014] ZAGPPHC 192 (5 March 2014)

[2014] ZAGPPHC 192**COURT**

North Gauteng High Court, Pretoria

BEFORE

M W Msimeki, T A N Makhubele

CASE / FILE NUMBER

A530/2012

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IN THE HIGH COURT
OF SOUTH AFRICA
(REPUBLIC OF
SOUTH AFRICA)
PRETORIA
CASE
NO: A530/2012

DATE:

05 MARCH 2014

In the matter

between:

KHALIPHILE

RICHARD SIZANI.....APPELLANT

And

THE

STATE.....RESPONDENT

JUDGMENT**MSIMEKI J:**

- [1] This appeal is directed against the Appellant's conviction and sentence by Magistrate Chauke who sat in the district court in Pretoria on 31 January 2012.
- [2] The Appellant, a 54 year old male, was charged with the contravention of Section 31
- (1) of the Maintenance Act No.99 of 1998 in that he, as the state alleged, had failed to comply with the maintenance order of 10 July 2009.

[3] The Appellant after conviction, was sentenced as follows:

“twelve (12) months imprisonment, wholly suspended for five (5) years on condition accused is not convicted for contravening Section 31 (1) Act 99 of 1998 committed during the period (sic) suspension and further that the accused pay the amount of R115 360-00 in four

(4) instalments starting from end of February – Last instalment end of May 2012.”

[4] The Appellant was refused leave to appeal against the conviction and sentence. This court, however, granted such leave on 15 June 2012 pursuant to the Petition which the Appellant had launched. The Appellant then appealed against the conviction and sentence.

[5] The Appellant gave 36 grounds of appeal which I shall not deal with for the reasons that I shall later give in this judgment.

[6] The Appellant, in the meantime, launched a number of applications which I also deem unnecessary to deal with. The parties in those applications were inter alia, magistrate Chauke, the maintenance officer, the National Director of Public Prosecutions, Nohle Sizani and the clerk of the court.

[7] At the outset of the hearing in this appeal, Mr Raletjena, on behalf of the Respondent, submitted that the crisp issue which had needed attention at that stage, the determination of which, according to him, could even determine the outcome of the appeal, was whether the maintenance order of 10 July 2009 (the order in issue) which the Appellant was alleged to have contravened ever existed. The submission had merit. The order appears in volume 6 of the Provisional Appeal Record at 514A-77 to 514 A-78. The order has not been signed by the magistrate who dealt with the matter.

[8] During argument, before it was established whether or not the order in issue was valid, Mr Raletjena and Mr Meyer, counsel for the Respondent and the Appellant respectfully, conceded that:

1. The order had not been signed by the magistrate.
2. The order, as a result, was of no force and effect as it did not exist.
3. There was, therefore, no basis for charging the Appellant with the contravention as alleged.
4. The appeal against conviction and sentence had to succeed.
5. The conditions which magistrate Chauke had imposed would disappear with the setting aside of the conviction and the sentence.

Their concessions, in my view, were correctly made.

[9] Mr Meyer, however, submitted that the Appellant’s appeal had been twofold in that it had combined the criminal and civil elements.

Mr Raletjene strongly disagreed. His disagreement carried some substance.

- [10] It is evident that the parties in the applications I referred to above are not parties in this appeal. The appeal has been set down for hearing by the Director of Public Prosecutions not as a civil appeal. The chief clerk to the Director of Public Prosecutions in his notification dated 21 November 2013, informed the Appellant's legal representatives of the date on which the appeal would be argued and what needed to be done. The notification relates only to the criminal appeal. In need to pause and add that a civil appeal is set down for argument differently. Different Rules apply in criminal and civil appeals. Mr Raletjena further submitted that the appeal was criminal in nature. To bolster his submission, Mr Raletjena reminded all that even the Appellant himself had conceded that this is a criminal matter. This appears in paragraphs 13 and 14 of the Respondent's Heads of Argument.
- [11] This, indeed, is a criminal matter which magistrate Chauke dealt with. This also is a criminal appeal. The upholding of the appeal against conviction and sentence does away with the conditions which the magistrate imposed when sentencing the Appellant. The removal of that which worried the Appellant in its entirety renders a civil appeal unnecessary. The issue of costs can be dealt with separately as there is no room for it in this criminal appeal.
- [12] What is said above has made it unnecessary to consider any other aspect in this matter. Indeed, Mr Raletjena's submission at the very outset had merit.
- [13] The appeal against conviction and sentence, in the absence of the basis for charging and convicting the Appellant, should succeed.

ORDER

[14]

1. The appeal against conviction and sentence is upheld.
2. The conviction and sentence are set aside.
3. The court a quo's verdict is replaced with the following verdict

"the accused is found not guilty and discharged".

M.W MSIMEKI

JUDGE OF THE NORTH GAUTENG HIGH COURT, PRETORIA

I agree

T.A.N MAKHUBELE

ACTING JUDGE OF THE NORTH GAUTENG HIGH COURT, PRETORIA

COUNSEL FOR THE APPLICANT: Adv. MEYER

INSTRUCTED BY: TSABANE MALOBA INC.

COUNSEL FOR THE RESPONDENT: Adv. M A RALETJENA

INSTRUCTED BY:

DATE OF HEARING: 24 FEBRUARY 2014

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