

A197/2005
IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

Date: 07/02/2005

NOT REPORTABLE

High Court Ref. No.: 5599
Magistrate's Serial No.: 40/2004
Case No.: B888/2004

Magistrate
HLANGANANI (held at WATERVAL)

THE STATE V NNDWAMATO REMEMBER NDOU

REVIEW JUDGMENT

SOUTHWOOD J

On 18 October 2004 the accused was found guilty in the Waterval magistrates' court of contravening section 17 of the Domestic Violence Act 116 of 1998 ('the Act') and sentenced to 12 months imprisonment and a further six (6) months imprisonment suspended for three (3) years on condition the accused is not again convicted of assault with the intent to do grievous bodily harm and of violating the terms of a protection order dated 1 October 2004, committed during the period of suspension.

The victim, Alpheus Ndou, and the accused are father and son. On 9 September 2004 Mr Ndou obtained an interim protection order against the accused in terms of section 5(2) of the Act. The Waterval magistrates' court ordered the accused not to commit the following acts of domestic violence: 'assault, abuse, insult, threatens and not to harass the applicant (ie Mr Ndou) in any manner whatsoever'. On 18 October 2004 this interim order was made final.

The accused was found guilty of contravening this part of the order. The accused was found to have thrown Mr Ndou to the ground, dragged him by the legs, punched him and threatened to chop him with an axe. Mr Ndou suffered bruises of the head and back and received treatment in hospital. When pleading not guilty the accused said that he had acted in self-defence. However he chose not to give evidence and was properly convicted of the offence.

In his reasons for sentence the presiding magistrate has rightly taken a serious view of the offence and the circumstances in which it was committed. He has pointed out that the accused assaulted his father in a callous manner and with the utmost contempt and that the complainant's dignity has been seriously injured as a result. He also pointed out that assaults by juveniles on their parents and grandparents have become prevalent within the area of jurisdiction of the court and the situation demands that the courts act decisively. The presiding magistrate is particularly concerned about the crisis which could lead to a state of complete moral decay, anarchy and chaos.

The presiding magistrate was sensitive to the consequences of imposing a jail sentence on the accused who is a university student. But he pointed out that the accused demonstrated unrestrained hostility to his father and was not prepared to compromise in any way. He also pointed out that the accused showed no remorse. He was, in the view of the presiding magistrate, the author of his misfortune.

The Director of Public Prosecutions also regards the matter as serious, as I do. However the Director of Public Prosecutions considers that the sentence imposed is excessive and should be reduced. He suggests that a sentence of nine (9) months imprisonment of which three (3) months is conditionally suspended for three (3) years would be more appropriate in the light of the nature and seriousness of the offence, the interests of society and that of the victim and the personal circumstances of the accused. I agree. I am also of the view that interference with the sentence is justified in view of the presiding magistrate's over-emphasis of the interests of the community which amounts to a misdirection.

The following order is made:

I The conviction is confirmed;

II The sentence is set aside and replaced with the following:

'Nine (9) months imprisonment of which three (3) months imprisonment is suspended for three (3) years on condition that the accused is not found guilty of assault or a contravention of section 17 of Act 116 of 1998 committed during the period of suspension';

- III In terms of section 282 of Act 51 of 1977 it is ordered that the substituted sentence be deemed to have been imposed on the 18th of October 2004.

B.R. SOUTHWOOD
JUDGE OF THE HIGH COURT

I agree

G. WEBSTER
JUDGE OF THE HIGH COURT