A963/2006

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

DATE:

REPORTABLE
High Court ref: 2106/2006
Mag. Case No.: LR 55/2005 Mag. Serial no.:

In the review matter between:

THE STATE

And

MOLAO LUCAS SEKGOBELA

REVIEW JUDGMENT

MAVUNDLA, J

This matter comes before me by way of an automatic review. The accused was summarily found guilty of contempt of a Court in facie curiae in terms of section 108 (1) of the Magistrate Act at the Magistrates Court in Lenyenye on 22/02/2006. On 30/03/2006 the accused was sentenced to six (6) months imprisonment.

When the review first served before Botha J, he directed a query to the Magistrate inquiring whether:

(a) This was an appropriate case where the summary procedure should have been followed, and he referred the Magistrate to S v Mamabolo 2001(1) SACR 686 CC at 712 A-D.

(b) The sentence was not excessive.

The Magistrate has responded by stating that

"(a) This is a case where summary procedure should have been used, because of the following reasons:

(i) Summary procedure can be invoked by Magistrate's Courts only in case of contempt committed by a person who is present in Court and is therefore a fit subject for summary treatment, he is there to make his defence and to hear sentence pronounced upon him. See R v Buthelezi 1960 (1) SA 284 (11) at 285.

This required prompt and drastic action to preserve the Court's dignity and the due carrying out its functions. I also agree that summary proceedings should be used cautiously and only when the administration of Justice rally (sic) requires. The accused insulted the Magistrate by referred to her mother's vagina in a full Court and he also refused to apologize. Accused willfully insulted a judicial officer and intentionally.

I believe that the summary procedure adopted by this Court was justifiable and not infringing accused (sic) constitutional rights. The accused impaired the dignity, integrity of the Court

(b) The Court imposed a sentence of 6 months imprisonment, because the contempt was deliberate and no apology given. What was done was a particularly severe violation of the Court's dignity, repute or authority. The Court's aim was to ensure that he will not again commit a similar offence and that it rehabilitate him.

In the light of what has been said above, it is my humble submission and prayer that the sentence imposed not be altered or interfered with."

I have since been afforded the comments from the office of the Deputy Director of Public Prosecutions per Adv D F De Beer SC and Adv H S Ngobeni, which I found to be valuable. They opine that:

i. There are a number of analogous statutory provision providing for some form of summary intervention by a judicial officer relating to conduct of a kind broadly similar to contempt of Court, but none of them deal with allegedly contemptuous conducts occurring outside Court and after the event as S v Mamabolo supra.

ii. It should be noted in casu, we are concerned with the kind of case where the orderly progress of judicial proceedings was disrupted requiring quick and effective intervention in order to permit the administration of justice to continue unhindered, and they refer to S v Nel 1991 (1) SA 730 (A) at 751H-753A.

iii. Contempt which is committed in facie curiae is a unique offence. There is a distinction procedure whereby the offender can there and then be found guilty and sentenced. A conviction under section 108(1) of the aforementioned Act, after a summary procedure, will stand if a Magistrate had adopted the principles laid down in S v Lavhengwa 18996(2) SACR 453 (W) at 495b, *et seq.*

The accused, who is 20 years old was apparently arrested on the 1 October 2005. His first appearance at Court was on the 14 October 2005. The charge against him was one of theft allegedly committed on the 20 April 2005. The accused was on the 14 October 2005, granted bail in the amount of R500.00 and the 27 October 2005 so as to enable the accused to apply to the legal Aid to be provided with an Attorney.

On the 3 November 2005 the accused, who was still in custody as he had not paid bail, advised the Magistrate that he has since changed his mind and he will now conduct his own defence. The case was postponed to the 5th

of December 2005. The matter was then postponed to the 17th January 2006, the accused was then represented by Attorneys M. S. Shilubane per Legal Aid Board.

The record reflects that on the 17th January 2006 the application to be released on warning was not successful. The case was postponed to the 22nd February 2006. On the 22nd February 2006 in the presence of his Attorney the charge was put to the accused. He pleaded not guilty and his right of silence was exercised. The case was then postponed to the 30th March 2006. This brings us now to the present matter in review. I however found it necessary to set out the history of the case prior to the events that resulted to this review.

On the 30th March 2006 the appellant appeared before the lady Magistrate. The accused was duly represented by his Attorneys Ms Shilubane. The record reflects as follows:

"Postpone to 02nd May 2006 for Regional Court Bail is fixed to secure the attendance of accused at his trial and the Court not only look at affordability but also on the offence alleged to be committed".

APPLICATION REFUSED.

Accused in custody bail already fixed at R500.00

POSTEA

Interpreter to Court: Accused says your Mother's Vigina
Court : Who are you referring to?
Accused : The Magistrate!

Ms Shilubane addresses the Court that she will not assist the accused for contempt. See Annexure "A" for summary proceedings Court found the accused guilty of contempt of Court in facie curiae. Right before sentence explained to the accused and he elect to mitigate from accused dock.

ACCUSED

I am 19 years old. I was in grade 6. I am staying with my Sister. The government is looking after us with food parcel. Both my parents have passed away. I will never apologies. Sentence six months imprisonment."

Annexure "A" reflects the summary proceedings:

" The Court proceed in terms of S 108 (1) of Magistrate Court Act.

Court: Mr Sekgobela you are now appearing before the Court on a charge of contempt of Court because you insulted this Court by saying "Your mother's vagina" thus contravening S.108 (1) of the Magistrate Court.

The Court also informs you of your constitutional rights to testify or gave explanation or all witnesses or remains silent.

Accused : I understand and would like to explain why I insulted the Court.

Court : Your may proceed with your explanation"

In review proceedings the question that the reviewing judge has to consider is whether the proceedings are in accordance with justice. If they are in accordance with justice then there is no reason to interfere. However, if the Court is of the view that the proceedings were not in accordance with justice then the Court may interfere. The court may either quash or set aside the conviction vide section 304 (1) (c) of Act 51 of 1977.

It is trite that the Bill of Rights through section 35 (b) guarantees a right to a fair trial which includes legal representation. In S v Lusu 2005(2) SACR 538 at 541f-g the Court said:

"The right to legal representation is a right that is central to the fairness of criminal trials. Kroon J, in S v Manguanyana 1992(2) SACR 283 at

287e, held that this right was an integral part of our legal system and the cornerstone of our legal system of justice. Section $35(3)$ of the Constitution of the Republic of South Africa, 1996 gives every accused person the right, as part of his or her right to a fair trial, "to be informed of his right promptly" and section 35(3)(g) provides that he or she has the right "to have a legal practitioner assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly".

In casu, the legal representative of the accused, Ms Shilubane informed the court that she will not assist the accused in the contempt of court proceedings. The Magistrate informed the accused of his constitutional rights to testify or give explanation or call witnesses or remains silent. However, she failed to also inform or remind him that he is also entitled to be legally represented even in this matter. I am of the view that this right cannot be simply undermined because the court intends to charge a person in terms of the provisions of section 108 of the Magistrate Courts Act.

In the matter In Re Muskwe 1993(2) SA 514 (ZHC) at 520I to 521, Adam J remarked, "... in R v Siber 1952(2) SA 475 (A) Schreiner JA at 480 stated:

'The power to commit summarily for contempt in facie curiae is essential to the proper administration of justice... But it is important that the power should be used with caution for, although in exercising it the judicial officer is protecting his office rather than himself, the facts that he is personally involved and that the party affected is given less than the usual opportunity of defending himself make it necessary to restrict the summary procedure to cases where the due administration of justice clearly requires it. There are many forms of contempt in facie curiae which require prompt and drastic action to preserve the court's dignity and the due carrying out of its functions".

In Duffey v Munik and Another 1957(4) SA 390 (T) Ramsbottom J observed at 391 G and 394 F - 395E that:

"It will be observed that the magistrate is given power to act summarily. He is entitled to maintain order and to secure the dignity of his court by imposing a fine summarily then and there... In such a case he acts upon his own observation. He is, as has been said, witness, prosecutor and Judge. The power to act summarily in that way is conferred upon him, but that is not the only way in which the decorum of the proceedings in the magistrate's court can be maintained. The alternative procedure... is the normal procedure where a person is charged with contempt of court, and a summons may be issued in which the charge is formulated upon which the person charged is tried in the magistrate's court in the ordinary way...". In In Re Muskwe the court further at 523F - 524 cited the following:

"Further, in R v Moran [1985] 81 Crim App Rep 51 (CCA) at 53 Lawton LJ said:

'The following principle should be borne in mind. First, a decision to imprison the man for contempt should never be taken too quickly. The judge should give himself time for reflection as to what is the best course to take. Secondly, he should consider whether that time for reflection should be extended to a different day because overnight thoughts are better than thoughts on the spur of the moment. Thirdly, the judge should consider whether the seeming contemnor should have some advice... Justice does not require a contemnor in the face of the court the right to legal advice. But if the circumstances are such that it is possible for the contemnor to have advice, he should be given an opportunity of having it. In practice, what usually happens is that somebody gives the contemnor advice. He takes it, apologizes to the court and that is the end of the matter. Giving a contemnor an opportunity to apologize is one of the most important aspects of this summary procedure, which in many ways is draconian. If there is a member of the Bar in court who would give advice, a wise judge would ask that member of the Bar if he would be willing to do so."

The court then went further to say at 526G-H that:

"Section 18 of the Zimbabwe Constitution, like the Canadian Charter of Rights and Freedoms, enshrines the constitutional right to be tried by an independent and impartial tribunal."

In the instant case, the accused's alleged contemptuous conduct was directed at the trial magistrate and, as Goodman JA said, "this is the type of case where the trial magistrate before whom the alleged contemptuous conduct was committed should not be the magistrate presiding at the contempt proceedings. She would be a judge in her own cause. It follows that the accused's constitutional right under section 18 of the Zimbabwe Constitution has been denied".

In the matter of S v Nel 1991 (1) SA 730 (A) which is cited in the In Re Muskwe case (supra) and to which Mr. Ngobeni has referred me, on the head note at 733A-C it is said that:

"Contempt which is committed in facie curiae is a unique offence; it is a distinct procedure whereby the offender can there and then be found guilty and sentenced; and the contempt is not an ordinary criminal in every day meaning of the word and ought not to be treated as such. The reasons for the existence of the summary procedure (in the wide sense) in terms of which the offender can immediately be dealt with is the necessity that a court is the axis on which the administration of justice turns, must be in a position to protect its reputation and dignity and to ensure the orderly conduct of its proceedings. The primary objective of this application of the contempt procedure is to maintain the reputation and dignity of the court and the orderliness of its proceedings. It is to achieve that objective that court exercises its powers to

punish the offender. The most important function of the imposition of punishment in this case is to enforce the court's authority. There is no room whatever for any notion of retribution. There can also be limited scope for reformation: for the most part (leaving aside exceptional cases) the purpose of the punishment which is imposed is to bring the offender to his senses in the very proceedings in which the offence is committed. Deterrence is by the same token often and chiefly directed at getting the offender to refrain from continuing with his contemptuous conduct in the proceedings which are underway. The punishment is not meant to hurt the offender but to bring

about an end to the outrage to the court's esteem and authority. The extent of the punishment stays in the background; in the foreground is the esteem and authority of the court; and between the one and the other there is no direct

relationship. The authority of the court is too precious to attempt to measure it against any punishment which may be imposed for conduct which harms it. Esteem for the court cannot be achieved by heavier punishments for insults to the court. These considerations indicate why a heavy sentence in these cases is generally inappropriate in the ordinary course of events. This probably explains why our lower courts were in the past moderate in the punishment which they imposed in facie curiae, as appears from the reported cases. That is a salutary practice which deserves encouragement and not good reason exists why the same approach shout not be applied in the Supreme Court."

The question of whether the procedure in section 108(1) of the Magistrate's Court Act 32 of 1944 ["the Act"], is constitutional or not, was settled in S v Mamabolo 2001(1) SACR 686 c-e at 710 [Par 52] where Kriegler J, in drawing a clear distinction between the case of a person who is summoned as contemplated in Section 35(3) of the Constitution and the person who is dealt with summarily as provided for in "... Section 108 of the Magistrate's Court or sections 159(1), 178(1) and (2) and 189 of the Criminal Procedure Act 51 of 1977 and Section 7 of the Regulation of Gatherings Act 205 of 1993, each of which empowers a presiding officer to deal with a particular form of disruptive conduct on the part of an accused, a witness or members of the public in the cause of criminal proceedings". Distinguishing the two procedures and commenting pertinently and expressly on the summary procedure, Kreigler J stated:

"52. It should also be noted that we are not concerned here with the kind of case where the orderly progress of judicial proceedings is disrupted, possibly requiring quick and effective judicial intervention in order to permit the administration of justice to continue unhindered. Here we are not looking at measures to nip disruptive conduct in the bud, but at occurrences that by definition occur only after the conclusion of a particular case - or possibly unrelated to any particular case. Swift intervention is not necessary".

Scurrilous attacks cannot be made with impunity on judicial officers [Mamabolo, paragraph 32, S v Nel (supra)].

The facts in this case are clearly distinguishable from the Mamabolo case. The conduct giving rise to the offensive utterance, in casu, was committed in curiae. In the Mamabolo case it was ex curiae - arising from remarks which appeared in a newspaper and were ascribed to the appellant.

The questions to be answered therefore are (1) whether the remarks were directed at the Magistrate in her personal capacity; and (2) if they can be considered as having been "disruptive conduct" that was contemptuous of the court. The first question was answered in unequivocal terms by the accused. He stated boldly that the remarks were directed at the Magistrate. They were not directed at the person sitting in the Magistrate's chair or at the presiding officer in any other capacity but expressly at the presiding Magistrate. It was in open court. It was in the course of judicial proceedings. The The circumstances clearly do not allow for any other inference than that the remarks were directed at the Magistrate in her capacity as the presiding officer in the judicial proceedings in the accused's case. The first question can only be answered in the affirmative.

The utterance by the accused is one that is not novel. It is one of three baser utterances that are not only vulgar in any language spoken in this country but one which is intended or used to evoke the strongest emotional or even physical reactions. The words are serious swear words. They are not words used commonly even by hardened non-conformists to civil language, or basic manners. Even the proverbial sailor would be hard-pressed to find language that is more lower or more distasteful than the lowest 'lavatorial epithets'. Such language is deprecated even by those in an advanced state of insobriety. It is known to have resulted in a sudden explosion of violence. Such language cannot be brushed off as meaningless abuse in a court of law, against any person in a court room, least of all the presiding officer whose responsibility it is to maintain and ensure the appropriate respect, decorum and control of court proceedings and the very institution of justice.

Would the summary proceedings offend against the basic tenets of fairness, absence of bias, open-mindedness, impartiality and that no person should sit in judgment in a matter in which he or she is presiding? Posed differently, was the Magistrate in this case obliged to refer the matter to the State for the due prosecution of the accused before another court?

In S v Roberts 1999(4) SA 915 SCA at 9221-923C the court said that:

"Bias in the sense of judicial bias has been said to mean a 'departure from standard of even-handed justice which the law required from those who occupy judicial office' (See Frankin and Others v Minister of Town and Country Planning 1948 AC 87 (HL) at 103 ([1947] 2 All ER 289 at 298B-C). What the law requires is not only that a judicial officer must conduct the trial open-mindedly, impartially and fairly but that such conduct must be 'manifest to all those who are concerned in the trial and its outcome, especially the accused'. See S v Rall 1982(1) SA 828 (A) at 831H-832A.

It is settled law that not only actual bias but also the appearance of bias disqualifies a judicial officer from presiding (or continue to preside) over judicial proceedings. The disqualification is so complete that continuing to preside after recusal should have occurred renders the further 'proceedings' a nullity: Council of Review, South African Defence Force and Others v Monning and Others 1992(3) SA 482 (A) at 495B-C; Morch v Nedtravel (Pty) Ltd t/a American Express Travel Services 1996(3) SA 1 (A) at 9G.

The Court further states at 924E that"... the requirements of the test thus finalized are as follows as applied to judicial proceedings:

(1) There must be a suspicion that the judicial officer might, not would, be biased;

(2) The suspicion must be that of a reasonable person in the position of the accused or litigant;

(3) The suspicion must be based on reasonable grounds."

In my view, Cameron J in the S v Lavhengwa (supra) at 496e-f is correct when he says that:

"The Magistrate's duty in summary proceedings under s108 to try the accused remains subject to the constitutional right to a fair triaL"

In S v Moila 2005(2) SACR 517 at 533h the Court said that:

"In the case of contempt committed in facie curiae, the Court may summarily subject the contemptner to trial for contempt of court and in the event of conviction.....The Constitutional Court, it would seem, accepts that summary proceedings are constitutional. It may well be that were the constitutionality of section 108 of the Magistrate Court Act to be squarely laid open before the Constitutional Court, a different conclusion might be reached. I am of the view that there is a need to follow the decision reached in the Muskwe (supra) albeit the fact that it is a foreign judgment. I am of the view that a broad and liberal interpretation of our constitution warrants a conclusion that, enshrined in section 35(3) is the right of the accused person to be tried by an independent and impartial tribunal, especially where the contemptuous conduct is directed personally at the very presiding officer before whom such contemptuous conduct is made".

Having said so, however, there will be instances that require to be dealt with quickly and effectively with conduct that is demeaning of the court, is contemptuous or disruptive"... requiring quick and effective judicial intervention in order to permit the administration of justice to continue unhindered" (S v Mamabolo - supra). Where that option is exercised by a court the contempt proceedings should be explained to the accused. The accused should, as previously stated, be afforded the opportunity to retract and apologize in appropriate circumstances. He should be also informed of the right to legal representation as well.

The office of the Director of Public Prosecutions (DPP) has conceded that the Magistrate failed to warn the accused of his right to legal representations before the contempt proceedings commenced and that the Magistrate further failed to explain the provisions of section 108(1) of the Act as well as the accused's constitutional right to testify, remain silent and to call witnesses. It is erroneously conceded by the DPP that the effect of these issues renders the process irregular which led to an injustice.

The record of the summary procedure indicates the following:

"COURT: Mr. Sekgobela you are now appearing before Court on a charge of contempt of Court because you insulted this Court by saying "your mother's vagina" thus contravening section 108(1) of the Magistrate Court (sic).

The Court also inform you of your constitutional rights to testify or give explanation (sic) or call witnesses or remain silent.

ACCUSED: I understand and would like to explain why I insulted the Court. COURT: You may proceed with your explanation.

ACCUSED: The Court is saying I committed housebreaking and I didn't. The Court is refusing to release me on warning that is why I insulted the Court. That is all"

It would appear that the counsel from the office of the DPP overlooked this particular page of the record. It is my considered view that there can be no question regarding the accused's rights to legal representation in the proceedings before the Magistrate. The rights had been explained previously and he not only had elected to be legally represented but even after he had elected to conduct his own defence he had continued to enjoy the services of Ms. Shilubane. Had he wished to be legally represented after Ms. Shilubane had intimated that she would not assist him in the contempt proceedings, he was at liberty to inform the Court that he wished to secure the services of another legal representative. That he did not do.

A similar situation arose in the case of S v May 2005(2) SACR 331 (SCA). In that case the appeal court remarked as follows at page 335(b) - (c):

"[7] However, as this Court has previously said in Hlantlalala and Others v Dyantyi NO and Another, 3 'the crucial question to be answered is what legal effect such irregularity had on the proceedings at the appellant's trial. What needs to be stressed immediately is that failure by a presiding judicial officer to inform an unrepresented accused of his right to legal representation, if found to be an irregularity, does not per se result in an unfair trial

necessitating the setting aside of the conviction on appeal.' In addition, it must be shown that the conviction has been tainted by the irregularity - that the appellant has been prejudiced."

This finding is consistent with the views of the Constitutional Court in S v Vermaas; S v Du Plessis 1995(3) SA 292 (CC) where the court had to determine"... whether persons standing trial on criminal charges who could not afford to pay for their legal representation were entitled to be provided with it at public expense once its lack amounted to a handicap so great that to try then and their even lay beyond the poe of justice" - as then enshrined in section 25(3)(e) of the Interim Constitution Act 200 of 1993. Commenting on the issue at paragraph 15 (page 299D-E), of the judgment, Didcott J stated: "... Such a decision is pre-eminently one for the judge trying the case, a Judge much better placed than we are by and large to appraise, usually in advance, its ramifications and their complexity or simplicity, the accused person's aptitude or ineptitude to fend for himself or herself in a matter of those dimensions, how grave the consequences of a conviction may look and any other factor that needs to be evaluated in the determination of the likelihood or unlikelihood that, if the trial were to proceed without a lawyer for the defence, the result would be 'substantial injustice'''.

The sole question to be considered is whether the accused was prejudiced in any way by being unrepresented. In answering this question it is necessary to bear in mind that the contempt proceedings in this case are summary in nature. There was no question about what the accused had said and the person against whom the expletive was directed and the reason therefore. By his own admission the accused "insulted" the "Magistrate" and "the Court". The conviction is, in my view, beyond reproach.

It is my considered view that the conviction was in order and should therefore stand.

I now turn to the sentence. As indicated above, the accused was arrested on 13 October 2005 and appeared for the first time in the

Magistrate's Court on the following day. He next appeared before the same court on 27 October 2005, and 13 November 2005, pending approval of his application to the Legal Aid Board. On 9 November 2005 bail in the sum of R500 was granted and the matter was postponed for further investigation. On 5 December 2005 the matter was once again postponed for further investigation. On 17 January 2006 the matter was postponed "finally" for further investigation to 22 February 2006. On the latter date the charge was put to the accused. He pleaded guilty and elected to remain silent: the matter was then postponed to 30 March 2006 "... pending R/C trial date". On the latter date the matter was again postponed for a regional court trial date to 2 May 2006. An application that the accused, who had failed to raise the amount of R500 for the bail, be released on warning was refused.

I have set out the history of the matter in order to highlight the fact that the accused was in custody from 13 October, 2005, to 30 March, 2006, with no prospect of the case against him being tried. It is against this background that this court must consider whether the sentence of six (6) months imprisonment is appropriate.

The sanction for contravening section 108(1) of Act 32 of 1944 is a fine not exceeding R2 000 or in default of payment to imprisonment for a period not exceeding six (6) months or to such imprisonment without the option of a fine. The sentence imposed on the accused was the maximum that could be imposed. If regard is had to the lengthy incarceration of the accused, the fact that he clearly had no idea that the charges against him were preferred by the State and not the presiding officer, coupled with the fact that he could not afford to pay his bail, his outburst are typical of an unsophisticated person acting out of exasperation. Whilst it is not my intention to down-play the vulgarity, it is imperative to bear in mind the words of Botha JA in S v Nel (supra) at page 752(G) to 753(D) where he stated:

"Daar is voorafgaande oorwegings wat belangriker is: hulle het betrekking op die wesenlike aard en doel van die minagtingsprosedure in 'n geval soos die huidige. Minagting wat gepleeg word in facie curiae is 'n eiesoortige misdaad; dit is 'n eiesoortige proses waarvolgens die oortreder daar en dan skuldig

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bevind en gevonnis kan word; en die straf wat opgele word, het ook 'n besondere kenmerk. Ek se dit om die volgende redes. Iemand wat minagting in facie curiae pleeg, is nie 'n gewone 'misdadiger' in die alledaagse betekenis van die woord nie, en hy behoort nie aldus behandel te word nie. Die bestaansreg van die summiere proses (in die wye sin) waarvolgens die oortreding dadelik in behandeling geneem kan word, is die noodsaaklikheid dat 'n hof, as die spil waarom die regspleging draai, in staat moet wees om sy waardigheid daadwerklik te beskerm en te bevorder, en om die ordelike verloop van die hofverrigtinge te verseker. Die primere oogmerk van die aanwending van die minagtingsproses is om die aansien en waardigheid van die hof, en die ordelikheid van sy verrigtinge te handhaaf. Dit is om daardie oogmerk te probeer verwesenlik dat d
oortreder te straf, uitgeoefen word. Die
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hoegenaamd vir enige gedagte van vergelding
ook net beperkte sprake wees: meestal (uitsonderingsgevalle daargelaat) is die doel van die straf wat opgele word, slegs om die oortreder tot besinning te bring in die einste verrigtinge waartydens die oortreding gepleeg word. Afskrikking is insgelyks gewoonlik en in hoofsaak toegespits daarop om die oortreder hom daarvan te laat weerhou om met sy minagtende optrede voort te gaan in die verrigtinge wat aan die gang is. Die straf is nie daarop gemik om die oortreder te krenk nie, maar om die kwetsing van die hof se aansien en gesag tot 'n einde te bring. Die omvang van die straf is op die agtergrond; op die voorgrond is die aansien en die gesag van die hof; en tussen die een en die ander is daar geen regstreekse verhouding nie. Die aansien van 'n hof is te kosbaar om dit te probeer meet aan enige straf wat opgele word vir optrede wat daaraan afbreuk doen. Aan agting vir 'n hof kan daar nie gewen word deur beledigings teenoor die hof swaarder te straf nie."

N.M. MAVUNDLA
Judge of the High Court

I AGREE

G. WEBSTER
Judge of the High Court

IN THE ORDINARY COURSE OF EVENTS

from any contemptuous conduct in the future court proceedings by a sentence of thirty (30) days imprisonment.

It is accordingly ordered that the conviction be confirmed. The sentence of six (6) months' imprisonment is set aside and replaced with

the following: "The accused is sentenced to thirty (30) days imprisonment. The sentence is to run from the date of sentence, namely 30 March 2006.

It is my considered view that the contempt in this instance did not warrant the imposition of the maximum sentence. The reputation, dignity and decorum at the court could easily have been ensured by a less severe sentence. The accused would in my view, have been 'brought to this senses' in the proceedings and insured that he would continue to desist and refrain