

NOT REPORTABLE

A472/2007

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

JUDGMENT HANDED DOWN: 4 JUNE 2007

Magistrate: KaNyamazane High Court Ref no.: 317 Case no.: K1517/06

THE STATE VS MDUDUZI SIPHO NKOSI

REVIEW JUDGMENT

LEGODI. J When this matter was initially laid before me on automatic review I

raised certain issues with the trial court as follows:

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1. *Did the magistrate consider compensation as a sentencing option particularly taking into account the relationship between the accused and the complainant?*

3. *Is a direct imprisonment not inducing a sense of shock, especially considering the personal circumstances of the accused and his relationship with the complainant?*

3. *Is imposition of direct imprisonment in count 1 considered together as one with count 2 for the purpose of sentence not in conflict with the limitation under Section 112(1)(a) of the Criminal Procedure Act?*

4. *What militated against any form of sentence than direct imprisonment?"*

The trial court still held the view that sentence imposed on the accused was appropriate in the circumstances of the case. Firstly, that the accused was in no way to pay fine or to compensate the complainant. Secondly, that the offences were serious and that direct imprisonment was justified.

The matter was referred to the Director of Public Prosecutions for their comment. In the response, it is submitted that direct imprisonment was appropriate. However, it is recommended that a sentence of twelve months be reduced to six months.

The trial court in its response further stated that the accused showed no respect to his own mother from whom he stole corrugated irons. During cross examination of the complainant, the accused is said to have displayed a total disrespect to the mother. For example, that the accused pointed fingers at his mother and saying he was not going to waste time on her.

Regarding a charge of malicious damage to property, the trial court conceded that, the accused having been convicted on his plea of guilty in terms of section 112(1)(a) of the Criminal Procedure Act, the charges could not have been taken as one for the purpose of sentence. Acceptance of a plea in terms of Section 112(1)(a) and the finding of guilty on such a plea limits a court to a particular sentence. For example, no direct imprisonment can be imposed. In the instant case therefore, the theft charge and malicious damage to property could not have been taken as one for the purpose of sentence in the light of direct imprisonment imposed on the accused.

Regarding sentence on the theft charge, the trial court found direct imprisonment to be the only sentence appropriate in the circumstances of the case. True, the accused had shown no respect to the mother. He did not appear to be remorseful. However, for a first time offender, twelve months imprisonment is in my view, a bit harsh. The Director of Public Prosecution

suggested six months imprisonment in respect of the theft charge and R900 or six months imprisonment in respect of the malicious damage to property. Remember, an acceptance of a plea in terms of section 112(1)(a) is meant for minor offences where imprisonment is not permitted. The accused as correctly stated by the trial court and conceded by the Office of the Director of Public Prosecutions cannot afford to pay a fine. To impose a sentence which will still keep the accused in jail due to his inability to pay fine will in my view defeat the purpose of section 112(1) (a) which is intended for minor offences and to keep an accused person out of jail. A wholly suspended sentence in my view would be appropriated.

Consequently, I would make the following order:

1.Conviction on both charges of theft and malicious damage to property is hereby confirmed.

2.Sentence of twelve months on a charge of theft is hereby set aside and substituted with

"The accused is sentenced to six months imprisonment antedated to the 9 February 2007.

3.

The accused in respect of the charge of malicious damage to property is sentenced to R900 or six months imprisonment wholly suspended for a period of three years on condition that the accused is not convicted on a charge of malicious damage to property committed during the period of suspension.

M F LEGODI  
JUDGE OF THE HIGH COURT  
I AGREE  
N M MAVUNDLA  
JUDGE OF THE HIGH COURT