IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

NOT REPORTABLE

CASE NO: A1027/06

In the matter between:

DATE: 13/6/2008

PETRUS JOHANNES VAN EEDEN APPLICANT

and

THE STATE RESPONDENT

JUDGEMENT

DOLAMO AJ.

[1] The appellant was tried in the district court at Ventersdorp on three counts. The first count was one of Assault with intent to do grievous bodily harm. It was alleged that he assaulted one John Mogorosi by hitting him with a brick and setting dogs on him. The second count was one of Assault in that the accused did unlawfully and intentionally assaulted one Ezekiel Sello Sekommere by slamming a door of a motor vehicle on him and hitting him with a fist. The third charge was an alleged contravention

of section 67(1)(a) of act 68 of 1995 in that he unlawfully and intentionally interfered with a member of the South African Police Service, the said Sekommere, in the execution of his duties by intentionally interfering in the arrest of another person.

[2] The latter two offences were alleged to have been committed on the 11th September 1998 while the first was alleged to have taken place on the 7th April 2001. All these offences occurred on Appellant's farm, Kliplaatdrift, in the district of Ventersdorp. For reasons not known to this Court and which are not apparent from the record the trial of the Appellant only commenced on the 7th November 2005.

[3] The Appellant pleaded not guilty to all the three counts and elected to give a plea explanation. On the first count he denied assaulting the complainant and stated that, on a request of a member of the Stock theft Unit of Stilfontein, he had been on the lookout for the complainant who had been suspected of stock theft. On the day in question and as a result of information received he went to make contact with the complainant. He was however assaulted by the complainant when he tried to apprehend him. By implication he alleged to have acted in self-defence. Regarding the Count of assault on Sekommere he denied the assault. He admitted slamming the door of the vehicle on him but alleged to have lacked the requisite intention because he was under the impression, from the

circumstances, that he was about to be a victim of a farm attack. He denied furthermore that he had hit the complainant with a fist.

[4] After a trial in which 12 witnesses testified, a majority of whom were branded liars by Appellant's legal representative, he was convicted on all three charges. On the First Count he was sentenced to R10 000.00 or 9 months imprisonment which was suspended for 5 years. On count two and three he was sentenced to R1 000.00 or 3 months imprisonment on each which were wholly suspended for 5 years. The conditions *of* suspension were the same on all three counts namely that the Appellant shall not be found guilty of the same offences during the period of suspension.

[5] The Appellant is now appealing against these convictions. The Notice of Appeal consisted of 160 paragraphs. In my view the over zealousness of Appellant's legal representative led him to concentrate on argument rather than real grounds of appeal. What amounts strictly to grounds of appeal appear from his Heads of argument, and can be summarized as follows:

(A) That the trial court erred by not taking into consideration the material contradictions in the versions of the various state witnesses and in so doing attached undue weight to their evidence which led to the rejection of the Appellant's version.

(B) That the Appellant did not enjoy a fair trial and was prejudice by the

decisions to try him on all unrelated charges in one trial. The prejudice according to this argument lay in the fact that the trial court, by finding the appellant's evidence on count two and three unreliable, was compelled to do the same in respect of count one.

(C) That the trial court erred in finding the Appellant guilty on count three despite the fact that Insp Sekommere's intended arrest of Mr Maleki was unlawful.

[6] Before I deal with the grounds of appeal as argued by Mr Kruger before us, it will be apposite to summarize the evidence led in the trial. The evidence of the state on Counts two and three are interlinked and relate to the events on Appellant's farm on the day of 11th September 1998 when Sekommere went to the farm, in the company of one Lentso, a complainant who was to point out the suspect in that matter. The suspect, one Watson Maleki, was an employee on Appellant's farm. The evidence of Sekommere is that on arrival at the farm was pointed out by Lentso. Sekommere informed Maleki about the impending arrest and requested him to report this fact to his employer, the Appellant. According to Sekommere Maleki left as instructed to report to the Appellant while, according to Lentso and the Appellant, the Appellant came on his own accord to Sekommere and Maleki who were standing next to Sekommere's vehicle. Further, according to Sekommere, he introduced himself to the Appellant and informed him about the purpose of his

presence on his farm. Appellant was aggressive, abusive, ordered Sekommere off his farm, and Maleki back to work. Appellant then slammed the door of Sekommere's vehicle on him which injured him. Sekommere was at the time standing between the open right door and the body of his vehicle. The injury was accentuated by the fire-arm which was in a holster on his hip. The Appellant's version is that when he saw Sekommere he went to him to find out the purpose of his presence on his farm. When he approached him Sekommere, who did not introduce himself, drew his fire-arm and pointed it at him, hence his reaction to slam the door on him. After slamming the door Sekommere testified further that Appellant hit him with a fist on his ear. The Appellant thereafter ran away and came back with his bakkie with which he blocked the exit, thereby preventing Sekommere from leaving the farm. While admitting to blocking the exit to prevent him from leaving the Appellant denied hitting Sekommere with a fist. The actions of the Appellant in blocking the exit resulted in policemen, four in number, being summoned to and arriving at the scene. The Appellant was still uncooperative and refused to remove his bakkie from the exit. It was only upon the arrival of the fifth policeman, the station commander, Captain Rautenbach, that the Appellant was persuaded to remove his bakkie, securing the exit of Sekommere from the farm. This only after a lengthy discussion with Rautenbach. Lentso also testified. His evidence confirmed that of Sekommere. The only difference being that, according to him, Appellant arrived at the scene without being

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summoned by Maleki and that Sekommere was first hit with a fist and therafter a door slammed on him. Watson Maleki was also called to testify. His evidence was that when the Appellant arrived at the scene he told him that Sekommere was there to arrest him. He confirmed that although he was sent to inform the Appellant about his eminent arrest, Appellant came to the scene on his own, before he could be called.

[7] The State's next witness to testify was Mkombo. He was called to Appellant's farm per radio communication. He went together with one Inspector Siyama a member of the visible policing unit who was clad in full polite uniform and, on arrival, were met by Appellant. The Appellant was aggressive and ordered them to immediately stop. He was screaming and swearing, claiming that he no longer had confidence in the police and demanded that they call Captain Rautenbach. Mkombo denied that on his arrival Sekommere had his fire-arm in his hand. Soon thereafter Inspector Scholtz and Sergeant Van Heerden also arrived at the scene. They too tried to reason with Appellant but to no avail. Eventually Rautenbach arrived. On his arrival he spoke to Maleki, who had no problem in being taken into custody, but Appellant called him aside and the two went behind one of the farm's out-buildings. He could not hear what they were discussing. Maleki later came back and got into the police bakkie.

[8] According to Rautenbach Appellant was aggressive and agitated. He had to ask Appellant several times to remove his bakkie but he refused. It was only when he told him that he would be arrested, for hindering a policeman in the execution of his duties, that he removed the bakkie and Sekommere could then leave the farm. He could not recall whether Sekommere had his fire arm in his hand but, added that if he had it in his hand he would have taken the initiative to tell him to put it away. It appears that Appellant was not taken into custody immediately but was engaged in a discussion in an attempt to resolve the matter. It is not clear when were charges laid against him.

[9] The complainant in Count 1 John Mogorosi testified in relation to that count. His testimony was that on the day in question at approximately 15:00 he was at his girlfriend's place, on Appellant's farm. He was in bed, as it was chilly and drizzling, when Appellant arrived, woke him up, clapped him and dragged him out to another house nearby and thereat started to assault him by, *inter alia*, hitting hit him with a brick in the face. He was at that time lying on his back and Appellant was on top of him. Appellant's wife came while he was being assaulted and said that he should stop assaulting him but rather call the police. He then bit the Appellant on his finger of the hand with which he was holding on to him apparently in an effort to free himself. Appellant then called his dogs, approximately seven of them, and set them on the complainant. One of

these dogs had three legs. The dogs bit him on his thighs and sides. The Appellant had then called his police brother who on arrival at the scene, tied or assisted to tie complainant to a pole and dozed him with a hosepipe.

[10] The Appellant's version regarding this charge was that the complainant's injuries were sustained in previous fights and assaults and were not caused him. On the question of the dog bites the Appellant's version was to deny that he had set any dogs on the complainant, claiming that his dogs are shepherd dogs and will not attack people. He also denied that the three legged dog was still alive at the time. Dr Keith Raymond Williams, who attended to Mogorosi testified about the latter's injuries. He confirmed that he had seen the complainant at the casualty Department at Ventersdorp Hospital on the 7th April 2001. The patient informed him that he was beaten with a brick and that he had various dog bite marks on him. After treating the patient he decided to transfer him to Dovescott Hospital, the reason being that the patient had to be observed for 24 hours because of the head injuries. Under cross-examination he could not recall complainant, from the photos which were handed in as exhibits, as the patient he treated. This was because, according to him, the incident happened a long time ago. He also could not independently confirm the nature of the injuries. A further state witness on this count, Inspector Mathlakwane, testified about the dogs that confronted her, together with

Inspector Motlele, on arrival at Appellant's farm. They found the complainant tied to a pole and bleeding from a head wound. There was also blood on his clothes. She, however, could not see whether his clothes were torn or not. They took Mogorosi to hospital and later transported him to Dovescott hospital because there was no ambulance to convey him. Inspector Motlele also testified. His evidence corroborated that of Matlhakwane. Sarah Diedericks was the next witness to testify on this count. She confirmed that she was complainant's girlfriend at the time of the incident. She also worked and lived on the Appellant's farm. She was at her place on the day in question when Appellant came to drag the complainant from her place. He followed them and saw that there were two dogs outside. She went back, took her daughter, and fled from the scene. She was confronted in cross-examination about her statements to the police wherein she had said that she was no longer in a relationship with the complainant and did not want him at her place. She denied the correctness of these statements. According to her she was taken by the Appellant to the police station and on arrival was told to tell the police that the Appellant was not the one who assaulted the complainant but that the complainant was already injured when he arrived at her place. It also transpired during cross-examination that she had made a second statement wherein she contradicted the first statement. Inspector Bester and Captain Jacobs were called to testify, both confirming that they each took a statement from her and confirmed their correctness.

[11] The Appellant also testified, repeating what was essentially put to all the state witnesses in cross-examination. He repeated the version that he thought that he was about to come under attack by Sekommere and that his action to slam the door on Sekommere was a pre-emptive one. Blocking Sekommere's exit was to prevent him from leaving the farm so that he could be arrested. He denied interfering with him in the execution of his duties. On the count of assault with intent to do grievous bodily harm to Mogorosi he also repeated what was put to witnesses in cross-examination by his legal representative.

[12] The above was the totality of the evidence which was led in the Court *a quo*. This Court has to decide whether the State proved all the charges against the Appellant. The State had to prove this beyond reasonable doubt. Appellant would be entitled to a benefit of the doubt and acquittal if the evidence did not meet this requisite standard of proof.

[13] I have no doubt in accepting the evidence of Sekommere as corroborated by the evidence of Lentso and Maleki. The discrepancies, such as have been pointed out by Appellant's counsel, in particular as to the sequence of the assault on Sekommere, is to be expected were the events took place a long time ago before the matter came for trial. So too, it can be expected, that there would be a difference regarding such minor details as

to whether Appellant came to the scene on his own accord or was called by Maleki. These are not material discrepancies and, in my view, do not affect the reliability of the witnesses' testimony. As such these witnesses' evidence can be safely accepted. The question is whether the accused's version that he thought he was coming under attack is reasonably possibly true. He would be entitled to an acquittal if his version is reasonably possibly true. According to Appellant the presence of Sekommere on his farm, who did not announce himself to him and his alleged unprovoked production of a fire-arm led him to believe that he was about to become a victim of a farm attack. As a preventative measure he slammed the door of the vehicle on Sekommere and rushed to fetch his bakkie with which he blocked the exit thereby preventing the attacker from leaving his property. This was so that the attacker could be arrested. What is strange with his conduct is that, after going to the trouble of preventing the attacker from escaping, he does nothing by way of soliciting help to apprehend this attacker. There is no evidence on record that he sought the help of the police nor, for that matter, of his brother who is in the police. If indeed he had done so he would have led such evidence. Strange as his action may have been, such additional evidence would have gone a long way in providing support for his version that we wanted his would be attacker to be arrested. In the absence of evidence supporting his assertion that he was preventing Sekommere from leaving the farm so that the latter can be arrested, his version that he thought he was about to be attacked

becomes improbable. His further failure to explain his actions to the police who arrived at the scene, particularly Siyama who was clearly identifiable as such by his uniform, makes his version even more improbable. He would have immediately requested the arrest of Sekommere when the first two policemen arrived on the scene. Instead he engaged in further acts of defiance of the authority of the police. His actions were clearly not the actions of a person who acted to prevent a farm attack and who wanted the arrest of his would be attacker. He only relented and allowed Sekommere to leave when he was threatened with arrest by Rautenbach. The conclusion therefore is that the version of the Appellant was a fabrication concocted to explain the otherwise inexplicable conduct towards a man of the law. His version can be safely rejected as false.

[14] On the second count of hindering a police officer in the execution of his lawful duty it was argued that Appellant could not be convicted of this offence since Sekommere was acting unlawfully. This argument sterms from the fact that Sekommere allegedly did not have a warrant for the arrest of Maleki and Appellant could therefore prevent the unlawful action.

[15] Section 40(1)(b) of the Criminal Procedure Act (Act 51 of 1977) provides that a peace offer may without a warrant arrest any person whom he reasonably suspects of having committed an offence referred to in schedule 1, other than the offence of escaping from lawful custody.

Sekommere testified that he was on Appellant's farm to arrest Maleki for assault on Lentso. The details of the assault were not disclosed. In cross-examination it emerged that Maleki also took Lentso's bicycle. It is not clear whether he assaulted him and then took his bicycle, which would make it robbery or whether the assault was separate from the taking of the bicycle. This however will have made no difference: both robbery and theft are offences resorting under Schedule 1 of the Criminal Procedure Act for which a peace offer may arrest a person without a warrant, if he reasonably suspect him of having committed that offence. Sekommere was cross-examined in detail on irrelevant issues but at no stage was it put to him that he was acting unlawful. This argument cannot be sustained and Appellant was correctly convicted of this offence.

[16] Mogorosi's evidence was straight forward. This was corroborated by that of Sarah Diedericks that the Appellant arrived at her place and started dragging the complainant out. She also mentioned the presence of two of Appellant's dogs on the scene. While she could not corroborate the complainant about what transpired after she had fled from the scene the manner in which the Appellant handled the complainant in her presence allows for an inference to be drawn that he indeed assault him in the manner in which the complained outlined. Such an inference will be a reasonable inference to be drawn from the proven facts. Her evidence of also negates the Appellant's version that complainant had sustained the

severe injuries, noted by Dr Williams, from previous assaults. She would have mentioned it in her evidence if the complainant was already severely injured when she arrived at her place. The State therefore had succeeded in proving beyond reasonable doubt that the Appellant was the one who inflicted these injuries on the complainant. His claim that the complainant attacked him when he tried to effect an arrest is devoit of any merits and can be safely rejected as false. The Appellant was correctly convicted on this offence as well.

[17] The Appellant further argued that he did not enjoy a fair trial in that he was tried simultaneously for unrelated offences which led the Court *a quo* to be prejudiced against him in the other charge of assault on Mogorosi. Section 35(5) of the Constitution of the Republic of South Africa guarantees an accused person the right to a fair trial. Most, but not exclusively, of the guarantees listed in Section 35(3) relate to the procedural fairness of a trial. There is one those which also guarantees a substantively fair trial. In S *v* Zuma 1995(2) *SA* 842 *(CC)* the Constitutional Court, in paragraph 16, interpreted the provisions of Section 35(3) liberally so that the guarantees listed therein are not a *numerous clauses.* This was stated by Kentridge JD (interpreting section 25(3)1c of the Interim Constitution) as follows:

[17] *"The right to* a *fair trial conferred by that provision is broader than the list of specific rights set out in paragraphs* (a) *to (j) of the subsection. It*

embraces a *concept* of *substantive fairness when is not to be equated with what might have passed muster in our criminal courts before the Constitution came into force.* "

[18] Can the trial of the Appellant for offences committed at different times under different circumstances rob him of his right to a fair trial? The answer in my view, and even on the extended meaning of substantive fairness expounded in the *Zuma* decision *supra,* is an emphatic no. The Appellant was in no way prejudiced by his trial simultaneously for the different offences committed against Sekommere and the one committed against Mogorosi. An analysis of the judgement of the learned Magistrate indicate that he assessed the evidence against the Appellant correctly and arrived, based thereon, on a conclusion that the State had proved its case against the Appellant beyond reasonable doubt. I am satisfied that the Appellant did enjoy a fair trial and was properly convicted.

[19] The conclusion I have arrived at therefore is that the Appeal against conviction on all the counts must fail.

The order I propose therefore is that the appeal against conviction on all the counts is dismissed.

Dated and Signed at PRETORIA on the 26Th day of MAY 2008.