

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

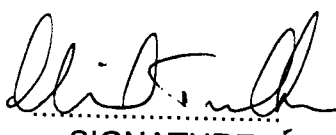
30/7/15  
CASE NO: A414/2014

In the matter between:

THABAKHOLO TILO TIMOTHY RAMASODI

Appellant

and

(1)	<u>REPORTABLE:</u>	<u>YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES:</u>	<u>YES / NO</u>
	29/07/15 DATE	 SIGNATURE

THE STATE

Respondent

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JUDGMENT

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Tuchten J:

- 1 The appellant was charged in a magistrate's court with the offence of assault with intent to commit grievous bodily harm. The appellant and the complainant were both employed at the time by the Department of Correctional Services at the Losperfontein Prison, in the Brits district. It was alleged by the complainant that on 3 September 2004, during a meeting of a committee of a body called the Case Management Committee (CMC) at the prison, the appellant seized a

"giant" stapler and struck the complainant one blow with this instrument on the left cheek.

- 2 The appellant testified that the complainant provoked him at the meeting by pulling funny faces and laughing at the appellant while the chairman of the CMC was talking to the appellant. The appellant's version was that he picked up the stapler and banged it on the desk but did not strike the complainant with it. The evidence further reveals that arising from this incident there was a disciplinary hearing involving the appellant but the record of this hearing was not before the court below and we therefore do not know what the allegation against the appellant in that hearing was or what evidence was given.
- 3 Despite the appellant's denial of guilt, the magistrate convicted the appellant as charged and imposed a suspended sentence. Leave to appeal against both conviction and sentence was sought and granted by the court below. The appellant has abandoned the appeal against sentence and appeals only against conviction.
- 4 The state called one witness in addition to the complainant, Mr Mopedi, the chairman of the CMC. Mr Mopedi said that the stapler struck the complainant

... somewhere like to the mouth, I do not know whether it was the left side or the right side.

- 5 Mr Mopedi testified that he observed the appellant preparing to strike the complainant a second blow with the stapler which he, Mopedi, rushed to prevent. But strangely Mr Mopedi said that he did not know how many times the complainant was struck with the stapler.
- 6 Both the complainant and Mr Mopedi said that the blow caused a laceration which bled. Mr Mopedi said that the complainant went to the toilet to wash off the blood but could not remember if the committee resumed its session thereafter.
- 7 The main criticism of the state case advanced on appeal was the lack of corroborating evidence on the crucial issue, ie whether the complainant in fact suffered an injury which bled. I find it strange that the complainant, in this day when almost everyone has a cellphone which incorporates a camera, did not take a photograph of his alleged injury or arrange for one to be taken. My unease is heightened because the complainant says that he went to a medical practitioner who gave him a letter confirming the injury. This letter was referred to in evidence but not produced. In addition, the complainant laid a charge with the police. There is no evidence of the content of the docket or whether the police noted any visible injury.

- 8 The magistrate found both the complainant and Mr Mopedi to be credible witnesses. The magistrate was particularly impressed with Mr Mopedi. But the magistrate found as a fact that

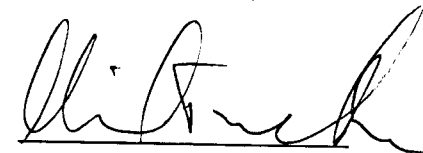
... the accused was infuriated by the actions of the complainant because he was making gay gestures at him, pulling his face, that is according to the accused evidence.

- 9 In my view this finding is very significant because both the complainant and Mr Mopedi denied that the complainant had done any such thing. Once the magistrate believed the appellant and disbelieved the state witnesses on this important issue, I do not think it was open to the magistrate to find that the state witnesses were generally credible. It follows that in my view the magistrate misdirected himself on a material issue in the case. As I see it, the anger experienced by the appellant is in this context a neutral factor: there is nothing in the evidence to suggest that the angry response alleged by the appellant, ie that he banged the stapler on the table, was disproportionate to the provocation. In my view there is no preponderance of probabilities in this context in favour of the state version. On the contrary, I think that a man angered by such childish behaviour in a formal workplace meeting is generally more likely to make his feelings known in the way alleged by the appellant than by causing the man provoking him actual bodily harm.

10 The cumulative effect of this misdirection, the disparity between the versions of the two state witnesses about where on the complainant's face the injury actually was and the weakness generally of the evidence for the state in relation to the existence or otherwise of the alleged laceration leads me to conclude that the magistrate ought to have found that the appellant's version, that he did not strike the complainant with the stapler, was reasonably possibly true.

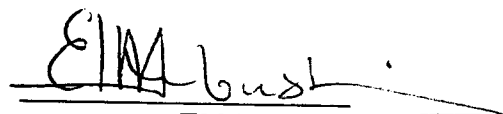
11 That being the case, the appeal must succeed. I make the following order:

- 1 The appeal against conviction succeeds.
- 2 The conviction and sentence imposed upon the appellant in the court below are both set aside and replaced with the following: The accused is found not guilty and discharged.



NB Tuchten  
Judge of the High Court  
29 July 2015

I agree.



EM Kubushi  
Judge of the High Court  
29 July 2015