

**IN THE HIGH COURT OF SOUTH AFRICA****EASTERN CAPE DIVISION****CA&R 03/07****In the matter between****JOHANNES CHRISTOFFEL GROENEWALD****Appellant****and****THE STATE****Respondent**

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**JUDGMENT**

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**Froneman J.**

The appellant, a 67 year old pensioner, was convicted of negligent driving in the Magistrates' Court, Grahamstown, and sentenced to a fine of R2000,00 or 12 months imprisonment, wholly suspended for 3 years. With the leave of the trial court the appellant appealed against both the conviction and sentence.

The state case against the appellant rested primarily on the evidence of Mr. Tetani, who testified that the appellant, driving a bakkie, failed to stop at a stop sign in a side street (Lansdowne Road), leading into the main street (African Street) he was driving his bicycle in, resulting in a collision between the appellant's vehicle and his bicycle. The appellant denied that he failed to stop at the stop sign, or that any actual collision occurred with the bicycle. A second state witness, Mr. Nklowane, a passenger on the bakkie, supported the appellant's version that the appellant stopped at the stop sign in

Lansdowne Road, but also confirmed that the cyclist was coming down African Street and fell down when the appellant turned into African Street. He also stated that the persons on the back of the bakkie shouted for the appellant to stop so that the fallen cyclist could be helped, but that the appellant paid no heed and drove off.

The appellant confirmed in his evidence that after he turned into African Street the passengers on the back of the bakkie made a noise, but that he thought nothing of it and did not stop. It was only later that Mr. Tekani accused and confronted him, in an allegedly intoxicated state, of colliding with his bicycle. He conceded that he never saw the cyclist when driving.

The magistrate did not make any specific adverse findings on the credibility of the appellant, although she appeared to accept Mr. Tekani's version as the main basis for the conviction of the appellant for negligent driving. In the alternative, however, she also considered that the appellant was guilty of negligent driving on his own version.

In my view there is no reason apparent from the record why the appellant's version of events should not be accepted as reasonably possibly true. His assertion of stopping at the stop sign is explicitly corroborated by the witness Nklowane, as is his denial of any actual collision with the bicycle. Tekani's own explanation of how he sustained the injuries he did if there was an actual collision with the bakkie is also suspect. The only question that remains is whether the appellant was, on his own version, guilty of negligent driving.

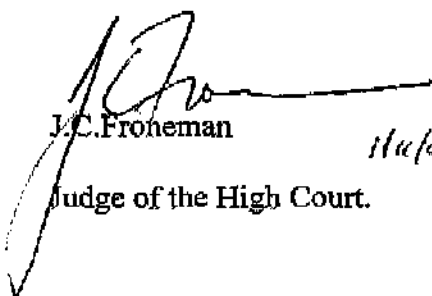
In my view he clearly was. He admitted that he never saw the cyclist. The state evidence establishes that Mr. Tekani travelled down in African Street from the appellant's left and that he fell off from his bicycle in some way or another in close proximity to the appellant's vehicle. The appellant's passengers tried to alert the appellant to this, but he paid no heed to them. There is nothing to suggest any reason why the appellant would have been unable to see the approaching cyclist had he kept a proper lookout as he crossed and turned to drive to his right down African Street. He was guilty, on his own version, of negligent driving in not keeping a proper lookout.

I do not consider that a wholly suspended sentence is inappropriate for the offence but I agree with Mr. Renaud who appeared for the appellant on appeal (not in the trial itself) that the period of imprisonment in default of payment of the fine is excessive. He referred to *S v Van der Vyver* 1978(3) SA 366 (E) in support of his argument. In that case a fine of R90 or 45 days imprisonment was confirmed on appeal for a similar offence in fairly similar circumstances. I accept that the change in the value of money has necessitated an upward adjustment of fines since then, but I do not think that justifies the upward adjustment in the period of imprisonment too.

In the result the appeal against the conviction fails, but succeeds in respect of the sentence to the extent that the alternative period of imprisonment in default of payment of the fine must be reduced.

The appellant's conviction is thus confirmed, but the sentence, backdated to 12 May 2007, is altered to read:

"Fined R2000,00 (two thousand rand) or 2 (two) months imprisonment which is wholly suspended for three years on condition that the accused is not convicted of contravening section 63 of Act 93 of 1996 during the period of suspension."

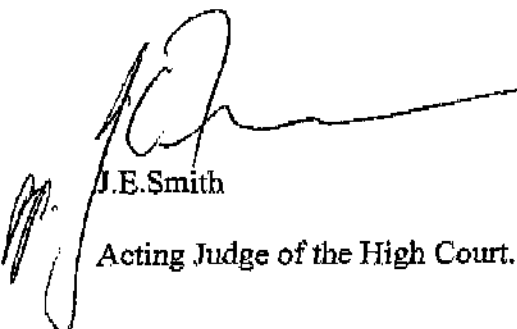


J.C. Froheman

11/11/07

Judge of the High Court.

I agree.



J.E. Smith

Acting Judge of the High Court.