FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No.: A79/2010

In the appeal between:

COBUS LABUSCHAGNE Appellant

and

DIE STAAT Respondent

JUDGMENT: RAMPAI, J *et* MOLEMELA, J

DELIVERED ON: MOLEMELA, J

HEARD ON: 6 SEPTEMBER 2010

DELIVERED ON: 28 OCTOBER 2010

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[1] This is an appeal against a conviction on a charge of common assault.

[2] The facts on which the conviction was based were as follows: The appellant was the complainant's employer for about 4½ months, during which period they enjoyed a harmonious relationship. The workplace was situated at a plot which also served as the appellant's place of residence.

[3] On the day of the incident the complainant was working in the workshop. While using a hammer to fix a trailer, he realized that he needed some bolts. The bolts were placed under a tree close to the appellant's house.

[4] It is common cause that there were dogs on the appellant's premises. According to the complainant, the dogs pounced on him before he could reach the tree where the bolts were placed. He warded them off by waving the hammer. He did not hit or injure any of the dogs.

[5] According to the complainant the appellant then assaulted him by hitting him with a clenched fist on the forehead and on his jaw and also kicked him on his ribs. As a result of the blow on the jaw, he sustained injuries to his teeth, which bled and became painful and lose. He also felt pains in the ribcage area. The appellant offered him pain tablets, which he took.

[6] He later complained to the appellant that he was still bleeding and experiencing pain. He informed the appellant that he needed to see a doctor. He left the workplace and

went to the police station where he reported the matter. He was handed a J88 form and took same to the clinic. He received medical attention, after which the J88 form was completed. He was told that information was stored on the computer. He did not know that he was supposed to return the J88 form back to the police station.

[7] The appellant's evidence was that on the day of the incident he was in his office when he heard his dogs barking. He also heard his wife reprimanding the dogs. He looked out through the window and noticed the dogs moving in the complainant's direction. He heard one of the dogs howling and saw the complainant holding a hammer and pulling his hand backwards. He heard his dog howling. He stepped out of his office and shouted at the complainant, asking him whether he would like it if he (the appellant) hit him with a hammer. He intended disarming the complainant of the hammer so as to prevent him form hitting the dogs again. The two of them wrestled for the hammer until he eventually managed to disarm the complainant of it. He threw the hammer on the ground and then went back to his office.

[8] It is common cause that the state did not tender any medical evidence. The appellant's counsel argued that the court *a quo* ought to have drawn a negative inference from the state's failure to do so. The appellant's counsel further argued that the fact that (i) the appellant was only arrested a month and a half after the incident, (ii) that the complainant continued to work for the appellant for a month after the incident and (iii) that he failed to attend the unfair dismissal hearing at the CCMA all served to cast doubt on the complainant's version, especially considering the fact that the complainant was a single witness.

[9] It is trite that the court of appeal will not tamper lightly with the court *a quo's* credibility findings. It is indeed so that the complainant was a single witness. It is clear from the court *a quo*'s judgment that it was mindful of this aspect and applied the necessary caution. The complainant's version was credible and bore no contradictions. There were also no inconsistencies in his evidence, despite the fact that the court *a quo* remarked that it was baffled by the fact that the complainant continued working for the appellant for another month after the assault. On this point I must hasten to mention that this aspect was never put to the complainant

during cross-examination and emerged for the first time during the defence case. At no stage did the complainant testify that he carried on working for the appellant for another month after the assault. His evidence was that he reported the matter to the police on the same day. The case reference number lends credence to the complainant's version on this aspect, as it shows that the docket was opened during January, the same month of the assault. In my view, the complainant's version was satisfactory in all material respects.

[10] I am of the view that the fact the appellant was only arrested a month and a half after the incident is neither here nor there and did not strengthen the appellant's version in any way. The same applies to the fact that the complainant did not attend the proceedings at the CCMA, for which he gave a perfectly plausible explanation.

[11] While it is indeed so that no medical evidence was adduced, this in my view does not in itself suggest that the complainant did not sustain any injuries. I agree with the state counsel that the fact that the appellant admittedly gave the complainant pain tablets shortly after the incident

somehow serves as corroboration of the assault and infliction of the injuries. Furthermore, it is clear from the evidence that the complainant was a simple unsophisticated person and thus his evidence regarding why he did not take the J88 form back to the police was plausible.

[12] There was no reason for the appellant to disarm the complainant of the hammer when there were apparently no injuries inflicted on the dogs, especially as the appellant did not witness the complainant hitting the dogs but only inferred that he had done so when he saw him pulling his hand back and hearing the dog howling. The appellant's own version was that the dogs were storming at the complainant and the appellant's own wife had to reprimand them. This behaviour on the part of the dogs is incompatible with the appellant's version that the dogs were not vicious and posed no threat to the complainant. In my view, the court *a quo* correctly found that the complainant was well within his rights to protect himself against the dogs.

[13] The appellant's version was not one that could be

described as reasonably possibly true. He contradicted himself on the aspect relating to the exact stage at which the dogs left the scene. He also contradicted a version put on his behalf during cross-examination which stated that that he actually saw the complainant hitting the dogs, and that after disarming the complainant, he pushed him to the ground (see p. 16 line 19 and 17 of the record, line 4 – 14). His denial of the evidence that criminal charges were laid on the same day was also not put to complainant during cross-examination for his comment. The court *a quo* thus correctly found that the state had proven its case beyond reasonable doubt. There is therefore no reason to tamper with the conviction.

[14] I would therefore make the following order:

1. The appeal against conviction fails.
2. The conviction is confirmed.
3. The sentence stands.

M. B. MOLEMELA, J

I concur.

M. H. RAMPAI, J

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