
ORDER

[1] The following order must therefore issue:

- a. The order of the court *a quo* is hereby set aside and substituted with the following:

“(a) In terms of Section 300 of the CPA, the accused is hereby ordered to pay the complainant an amount R400.00 (FOUR HUNDRED RAND) as compensation for the damages or loss caused by her unlawful and intentional damage to the complainant’s window panes.”

JUDGMENT

Per: **Nxumalo J**

INTRODUCTION:

[1] This is an ordinary review referred by the Northern Cape Chief Magistrate, OM Krieling, to this Court, as contemplated in Section 302(1)(a) of the **CRIMINAL PROCEDURE ACT** 51 of 1977.¹ The matter was identified during a judicial quality assurance assessment at the Philipstown Magistrate Court.

[2] The said Section expressly stipulates that any sentence imposed by a Magistrate’s Court:

¹ Hereinafter referred to as “the CPA”

- (i) which, in the case of imprisonment (including detention in a child and youth care centre providing a programme contemplated in Section 191(2)(j) of the **CHILDREN'S ACT** 38 of 2005,² exceeds a period of three months, if imposed by a judicial officer who has not held a substantive rank of magistrate or higher for a period of seven years, or which exceeds a period of six months, if imposed by a judicial officer who has held the substantive rank of magistrate or higher for a period of seven years or longer;
- (ii) which, in the case of a fine, exceeds the amount determined by the Minister from time to time by notice in the *Gazette* for the respective judicial officers referred to in Section 302(1)(a)(i) of the **CPA**;³

shall be subject in the ordinary course to review by a Judge of the Provincial or Local Division, having jurisdiction.

ISSUES:

- [3] On 28 September 2022, the accused was convicted by the Philipstown Magistrate Court *per* AJ Fortuin, after a plea of guilty to malicious injury to property, *vide* Section 112(1)(a) of the **CPA**. The court *a quo* sentenced the accused as follows:

“R400-00 (Four Hundred Rand) or 30-days imprisonment wholly suspended for 3 years on condition that the accused is not found guilty of malicious injury to property during the period of suspension.”

² Hereinafter referred to as “the *Children’s Act*”

³ R6 000 in the case of a judicial officer who has not held the substantive rank of Magistrate or higher for a period of seven years, and R12 000 in the case of a judicial officer who has held the substantive rank of Magistrate or higher for a period of seven years or longer - *See GN R62 in GG 36111* of 30 January 2013

*In terms of Section 300: Pay damages of R400-00 by 30 September 2022 failing, 30-days imprisonment.*⁴

- [4] The Chief Magistrate is of the opinion that an incompetent order was made in that Section 300 does not provide for a date of payment or a term of imprisonment if the accused does not make payment. Furthermore, the word “*committed*” (during the period of suspension) in the suspended sentence has been omitted. The matter was brought to the attention of the presiding Magistrate, who indicated in writing that he had no additional statements or comments.

DETERMINATION:

- [5] Section 112(1)(a) of the **CPA** expressly stipulates that where an accused, at a summary trial in any court, pleads guilty to the offence charged or to an offence of which he may be convicted on the charge and the prosecutor accepts the plea:
- (a) the presiding officer may, if he or she is of the opinion that the offence does not merit punishment of imprisonment or any other form of detention without the option of a fine or a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, convict the accused in respect of the offence to which he or she has pleaded guilty on his or her plea of guilty and-
 - (i) impose any competent sentence, other than imprisonment or any other form of detention without the option of a fine or a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*; or

⁴ Emphasis supplied

- (ii) deal with the accused otherwise in accordance with law.

[6] Section 300 of the **CPA**, on the other hand, discretely empowers our courts to award compensation where offences caused damages to or losses of property. It unambiguously stipulates as follows; in relevant part:

“(1) Where a person is convicted by a superior court, a regional court or a Magistrate’s Court of an offence which has caused damage to or loss of property (including money) belonging to some other person, the court in question may, upon the application of the injured person or of the prosecutor acting on the instructions of the injured person, forthwith award the injured person compensation for such damage or loss: Provided that—

(a) . . .

(2) ...

(3) (a) An award made under this Section—

(i) by a Magistrate’s Court, shall have the effect of a civil judgment of that court;

(ii) by a regional court, shall have the effect of a civil judgment of the Magistrate’s Court of the district in which the relevant trial took place.”

[7] It is clear from the foregoing that Section 300 (*ibid*), expressly and unambiguously stipulates that such awards shall have the effect of civil judgments *simpliciter*. In **S v Medell** 1997 (1) SACR 682 (C), it was correctly held that to the extent that a Section 300 of the **CPA** award is a compensatory order and not a correctional supervision, failure to comply therewith did not entitle a court to reconsider or impose any other punishment.

[8] The obvious sequelae should be for the injured person who is *pari passu* a judgment creditor to proceed with the normal course in pursuance of his judgment debt. To impose an alternative term of imprisonment if the accused does not make payment, unwittingly and effectively denies the victim of this cost-effective *sui generis* remedy. It also inevitably exposes the victim to the attendant vicissitudes of prescription. To this extent, it follows that no alternative imprisonment is permissible in the event of non-payment of the compensation.⁵ Nor is it permissible for the court to lay down a date before which compensation should take place unless it is a condition of suspension, which was not the case *a quo*.⁶

[9] In the premise, I cannot agree more with the learned Chief Magistrate that it was incompetent for the court *a quo* to grant the impugned order since the relevant Section does not provide for any payment date or for a term of imprisonment, if the accused does not make payment.

[10] In light of the foregoing, I do not deem it necessary to determine any remaining ancillary issues.

ORDER:

[11] The following order must therefore issue:

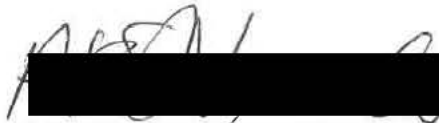

a. The order of the court *a quo* is hereby set aside and substituted with the following:

“(A) IN TERMS OF SECTION 300 OF THE CPA, THE ACCUSED IS HEREBY ORDERED TO PAY THE COMPLAINANT AN AMOUNT R400.00 (FOUR HUNDRED RAND) AS COMPENSATION FOR THE DAMAGES OR LOSS

⁵ *S v Luthuli* 1972 (4) SA 463 (N); *S v Msiza* 1979 (4) SA 473 (T).

⁶ *S v Nyathi* 1978 (4) SA 26 (T).

**CAUSED BY HER UNLAWFUL AND INTENTIONAL
DAMAGE TO THE COMPLAINANT'S WINDOW PANES."**

JUDGE APS NXUMALO
NORTHERN CAPE DIVISION
KIMBERLEY

I Concur.




JUDGE A STANTON
NORTHERN CAPE DIVISION
KIMBERLEY