

IN THE HIGH COURT OF SOUTH AFRICA
(BOPHUTHATSWANAPROVINCIAL DIVISION)

In the matter between:

THE STATE

and

KOKETSO SEHUME

REVIEW JUDGMENT

MOGOENG J.

- [1] The accused in this matter was convicted of a violation of a protection order in contravention of s 17 of the Domestic Violence Act No. 116 of 1998 (“the Act”). A sentence of R600.00 or 6 months imprisonment was imposed on him.
- [2] There are several unsatisfactory features about this matter which must be addressed. They all boil down to failure by the presiding officer to familiarise himself with the law that applies to his case to prepare and check the record properly before it was sent for review. I turn now to address my concerns

herebelow.

- 2.1 Pages 1, 2, 3 and the top of page 4 of the handwritten record were not typed and it was only after my query that this was done.
- 2.2 The offence that the accused was convicted of was not reflected on J4 and this is something which the Magistrate should have picked up when he appended his signature on J4.
- 2.3 The record, Annexure "A" in particular, is arranged in a manner that makes it virtually impossible for one to locate the information sought. The interim protection order which forms part of Annexure "A" is in the prescribed form and bears the necessary heading. However the final protection order itself is neither in the prescribed form, to wit, Form 6, nor does it have a heading to alert the reader to what it is. What is worse is that instead of the typed version of the proceedings relating to the final protection order being placed before the handwritten one in the record, it is the very last on the record. The final protection order, not the proceedings thereof, should have been placed prominently immediately after the forms relating to the interim protection order. As a result of this disorderly record I never realised that the final protection order was somewhere in Annexure "A" until I was about to send the second query regarding whether or not the interim order

was ever confirmed.

- 2.4 The accused was charged with violation of a protection order issued on 30 August 2000 which was served on him on 15 September 2000. The learned Magistrate then convicted him as charged. The problem that I have with this is that the order of 30 August 2000 was an interim protection order and it was no longer operative on 07 December 2000 (the day on which it was allegedly violated). The accused could not have violated it and could not therefore have been convicted as charged. He could only have been convicted of violation of the conditions of the order of 15 September 2000. The charge sheet should be understood as having been accordingly amended.
- 2.5 The other problem relates to the specific conditions of the order that the accused allegedly contravened. The charge sheet refers, *inter alia*, to “breaking 2 x window panes, the property of Merriam Sehume.” By convicting the accused as charged, the learned Magistrate thereby convicted him for also breaking the window panes. Such a conviction could have been proper had one of the conditions of the protection order been “not to commit any act of domestic violence” which condition was applied for as appears at paragraph 7(a) of the application for the interim protection order of paginated page 13 of Annexure “A”. However, when the interim protection order itself was granted, as appears on paginated page 15

of Annexure “A”, the only acts of domestic violence specified were “assault, threaten, insult and abuse the applicant in any manner.” None of this could ever explain why the accused was charged and convicted of contravening the condition of breaking window panes since the Court never imposed such a condition. Needless to say the final protection order is nothing more than the confirmation of the interim protection order.

- 2.6 J4 as completed by the learned Magistrate reads thus: ‘Convicted of the offence of the statutory crime of violation of a protection order in contravention of section 17(9) read with 99, 1, 5, 6 and 7 of the Domestic Violence Act No. 116 of 1998.’ This is the incorrect way of stating the offence that the accused was convicted of. What is even more disturbing is that J4 was completed in this incorrect manner in response to a query relating to the fact that J4 did not reflect the offence that the accused was convicted of. A meticulous approach was expected this time around. The concerns I have with the conviction as quoted are that firstly, s 17 does not have subsection (9) secondly, there is no section 99 in the Domestic Violence Act. The last section of this Act is 22. Thirdly, s 17 is a self-contained section which creates a clear offence and does not have to be read with those many other sections in order to formulate a charge sheet or to convict. The only useful section that it may be read with is the definition section (s 1). The irrelevance of the other sections that it is read with is exposed by the fact that s 5

relates to an interim order which was no longer applicable at the time of conviction since it was substituted by the final protection order, s 6 relates to the procedure in issuing the final protection order and s 7 deals with the number of conditions which the Court may impose when issuing an order. Clearly the learned Magistrate made no effort whatsoever to read any of these sections before he completed J4. He must have simply copied every section mentioned in the standard charge sheet for domestic violence offences on the assumption that what appears there was correct. The correct conviction should have been 'violation of a protection order in contravention of s 17 read with s 1 of the Domestic Violence Act No. 116 of 1998.'

- [3] I hope that this is not only the first but also the last time that a record is sent to this Court in this shambolic state, that an effort would be made by presiding officers to familiarise themselves with the law they apply, however heavy the workload might be, and that they would at least be courteous enough to acknowledge their mistakes and undertake not to repeat them.
- [4] It was correct to convict the accused of contravention of the condition of the protection order in that he threatened to stab Regina Sehume with a knife. The sentence, though couched in a somewhat unusual language, is also in accordance with justice. I have corrected both conviction and sentence to read as follows:

“Guilty of: Violation of the protection order in contravention of s 17 read with s 1 of the Domestic Violence Act No. 116 of 1998.

Sentence: R600.00 or 6 months imprisonment.”

A copy of Form 6 is annexed hereto for the convenience of the learned Magistrate.

M.T.R. MOGOENG
REVIEWING JUDGE

I agree

M.M. LEEUW
JUDGE OF THE HIGH COURT

DATED: 29MARCH 2001