REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 848/18
GJ CASE NO: P181/2013

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

6 June 2019

In the matter between:

RENIO MOYO **APPELLANT**

And

THE STATE **RESPONDENT**

JUDGMENT

GRANT AJ:

[1] The appellant raised several factors which in his view ought to have persuaded the court a quo to find substantial and compelling factors sufficient to deviate from the prescribed minimum sentence of 15 years and that having taken those factors into account would have so deviated and imposed a lesser sentence.

[2] The factors which the appellant consider as the basis for finding that there were substantial and compelling considerations are the following:

11.1 The Appellant was 30 years of age at the time he embarked upon this criminal activity.

11.2 The Appellant is married and has a child aged 1 year. He also has a child from a previous relationship, aged 9 years.

11.3 The Appellant, as the sole breadwinner, was responsible for the maintenance of his family, as well as his ailing parents.

11.4 The Appellant has a degree in accountancy.

11.5 The Appellant is a first offender.

11.6 The Appellant was incarcerated for a period of 11 months awaiting finalisation of the matter.

11.7 The Appellant pleaded guilty.

11.8 ....It is respectfully submitted that the crimes committed by the Appellant were not crimes of violence or those that impacted upon the bodily integrity of the complainants.

11.9 The fact that amount of total of the R374 638.00 that was stolen at his first place of employment, the sum of R100 000.00 was recovered. The fact that of the total sum of R1000 154.27 that was stolen at the second place of employment, the amount of R300 000.00 was recovered.

[3] On appeal the full bench advised appellant's counsel that he need not address himself on the issue of whether a non-parole period ought to have been imposed since this had been conceded by the respondent.

[4] Turning to the factors which the appellant submit ought to have pursuaded the honourable court to impose a lower sentence by virtue of the findings of substantial and compelling circumstances, counsel for the appellant failed to persuade the court that anyone a combination of the factors which he argued amount to substantial and compelling circumstances.

[5] The appellant conceded that he could not claim to be youthful. He further conceded that he could not claim the benefit of being a first offender by virtue of the fact that it was his first conviction on numerous offences which had been committed over a series of time.

[6] The Respondent further argued that during mitigation, the appellant misled the honourable court by submitting that he had committed the various thefts for the purposes of paying for his mother's medical bills. It was argued that the appellant is a repeat offender and committed the various crimes for personal gain.

[7] The appellant sought to pursue the argument that he pleaded guilty and that this ought to be regarded as a factor to be taken into account as an illustration of the acceptance of responsibility and as part of showing remorse. However it would appear as explained by counsel for the respondent that the Appellant had truly no

option but to plead guilty. In addition, there were no signs of remorse - nor was any apology ever tendered. No attempt on the part of appellant was made to make restitution – instead all his efforts were invested in frustrating the attempts of the victims of his offences from getting compensation for their losses. Once all this is considered together the fact that he pleaded guilty can at most operate as a neutral factor.

[8] Finally, an attempt was made to rely on the alleged disability of the appellant in that he is unable to walk. The medical report of the doctor revealed that the Appellant was malingering and that there was in fact nothing physically wrong with him.

[9] This is a fact which the trial court considered given all of the evidence at its disposal and all of the evidence which the Appellant himself could have put before that court but failed to. The honourable trial court was better placed than this court to make findings of fact on the evidence, before it.

[10] We were invited to speculate as to why the appellant may have sought to pursue his attempt at malingering since it only protracted his own bail appeal, the answer to that question is something which we do not believe an appeal court should embark on particularly as against the factual findings of the trial court seized with the evidence and confronted by an accused who was disingenuous and dishonest not only in the conduct for which he stood trial but also in the conduct of his trial. Nevertheless, one may however easily speculate in return that it ought to be of no import that the accused could have had the foresight that this very argument might have been pursued later – as it is now – precisely in an attempt to reduce any punishment that was imposed upon him.

[11] The Appellant committed the offences over a long period of time in a clearly well-planned and premeditated fashion. He abused the trust that was placed in him.

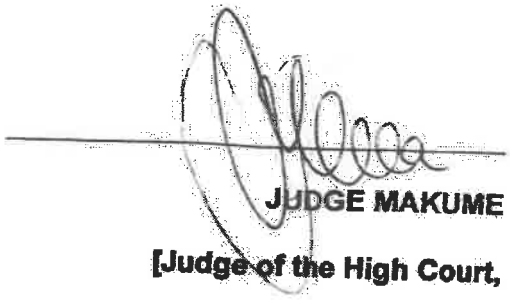
He was well paid and – as was finally conceded in argument on appeal he stole the money for personal gain alone. The cumulative effect of the theft was devastating to the complainants. Instead of attempting to make amends he resisted the attempts by the complainants to extract payment from him with the effect that much of what was ultimately recovered was paid for legal fees. In our view taking all the factors into consideration including the amount stolen, the sentence of 15 years was not an inappropriate sentence.

[12] We find no merit in any or all of the factors put to the court which ought singularly or in combination to have been regarded as substantial or compelling reasons to deviate from the minimum sentencing legislation. We are however agreed that the imposition of the non-parole period was improper, and we order that that condition be struck down.

IT IS THEREFORE ORDERED THAT:

1. The order as to the imposition of a non-parole period of two thirds of the period of imprisonment imposed for count 13 is overruled;

2. Otherwise the appeal is rejected.



JUDGE MAKUME

[Judge of the High Court,

Gauteng Local Division,

Johannesburg]

I concur.

ACTING JUDGE VAN DER WESTHUIZEN

[Judge of the High Court,

Gauteng Local Division,

Johannesburg]

I concur.

ACTING JUDGE GRANT

[Judge of the High Court,

Gauteng Local Division,

Johannesburg]

COUNSEL FOR APPELLANT: WILLIAM KARAM

COUNSEL FOR THE RESPONDENT/S: ROLENE DOOKUN

DATE/S OF HEARING: 13 MAY 2019
DATE OF JUDGMENT: 6 JUNE 2019