

(Inlexso Innovative Legal Services-rm)

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: CC40/2018

DATE: 18/09/2019

In the matter between

THE STATE

10 and

EDOZIE OBI & 4 OTHERS

Accused

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### J U D G M E N T

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**RANCHOD, J:** I then proceed to deliver judgment on sentence. Accused 1 has been convicted of 23 counts ranging from trafficking in persons using the services of victims of trafficking, rape, sexual exploitation, child for financial reward, sexual grooming of children, kidnapping, keeping a brothel and  
20 dealing in drugs amongst others. I will deal with the various counts and the number of these offences and the penalties provided for them, have found expression in The Prevention And Combatting Of Trafficking In Person's Act 7 of 2013 which I will refer to as the Trafficking Act and which came into operation on 9 August 2015.

Human trafficking despite the international culture of

human rights, is increasing worldwide. It violates basic human rights and is the cause of immeasurable trauma to victims, their families and the communities in which they live. It is a phenomenon that John Miller from the United States office to monitor to human trafficking calls:

“The greatest human rights challenge of our generation”.

In this regard it is important to note that human trafficking does not take place in a vacuum. So, says  
10 Professor Cornelius Roelofse in article titled “Human Trafficking as an organised crime in South Africa pre, during and post soccer world cup 2010 published in Criminologica 24 (3) 2011 Southern African Journal of Criminology. He goes on to say:

“It is a product of an increasing sex obsessed world with billions of dollars being earned from pornographic magazines, television channels and prostitution all because of slumping morality. It is obviously a very lucrative business whereas drugs  
20 and other narcotic substances can be used only once; a girl used as a sex slave can be sold over and over. This is the tragedy of this cruel exploitation of the vulnerable in our societies”.

This is tragically illustrated in this matter before me in what was a rather lengthy trial. It has been said that human

trafficking has to be understood as a criminal process rather than a criminal action. In other words, the elements of mobilization which is the act, the means used and the exploitation. Together, they are the result of a criminal strategy implemented by the perpetrators.

The three victims who testified in this case were all vulnerable young children at the beginning of their teenage years. They were trafficked, groomed and raped repeatedly. They were prostituted for accused 1's financial benefit. It is a  
10 sad indictment of certain members of the police force who were expected to bring perpetrators to book but instead, exploited the situation to their own advantage by taking bribes and themselves taking advantage of the young victims. This is some of the evidence that came out in this trial.

Having said that, there are those police officers who take their work seriously and it was their efforts that led to the prosecution of conviction of, in particular, accused 1 in this matter. I turn then to accused 1. Sir, you have been convicted  
on 23 of the 29 counts that you faced but before I say anything  
20 further, I must state that you were an unimpressive witness. Yours was a general bare denial of having been involved in any of the offences, yet the evidence against you has been overwhelming. The evidence of the three victims despite certain inconsistencies which were not material, clearly shows that you are the kingpin. Even your co-accused implicated

you. During a lengthy cross-examination by the prosecution, you often gave long-winded and evasive answers to questions and was at times aggressive and was in general an unimpressive and dishonest witness. You even went to the extent of threatening and intimidating your co-accused, in particular, accused 3 and accused 5 and this started long before the trial commenced when you tried to get them to retrack their statements to the police with regard to your involvement in these offences. During the course of the trial, 10 you threatened accused 5 on several occasions whilst sitting in the accused dock. On one occasion, accused 5 literally leapt out of the dock and ran to her counsel for protection.

You have not shown any remorse whatsoever. You did not testify in mitigation of sentence and your counsel had to make submissions from the bar. Section 13 of the Trafficking Act provides for penalties to be imposed for contravention of the Act while Section 14 of The Trafficking Act, provides for factors to be taken into account in sentencing which are aggravating.

20 The aggravating factors that the Court must take into account at the sentencing stage are, and I quote from Section 14:

“If a person is convicted of any offence under this chapter, the court that imposes the sentence must consider but is not limited to the following

aggravating factors:

(a) The significance of the role of the convicted person in the trafficking process. In this regard, as I said, you were the kingpin. You had strategized and planned how to lure girls for your business of drug trafficking and human trafficking.

(b) Previous convictions relating to the offence of trafficking persons or related offences. That does not apply to you as you are a first offender as far as these charges are concerned.

(c) Whether the convicted person caused the victim to become addicted to the use of a dependence-producing substance. This has become very clear in the course of the trial. You not only caused the victims to become dependent on the drug "rock", but also manufactured it.

(d) The conditions in which the victim was kept. The photographs of the premises as well as the evidence led in the course of the trial indicate that the premises were unhygienic with condoms lying all over in the rooms and in the yard and very little by way of furnishings so that the victims could have been kept in reasonable conditions. In fact, the premises were in a messy state.

(e) Whether the victim was held captive for any

period. The evidence is clear. One victim, Zandile, was kept for almost a year whilst the other two victims were kept for several days in captivity.

(f) Whether the victim suffered abuse the extent thereof. I have detailed that and will that mention that again in the course of this sentencing about the abuse, both physical, emotional, psychological and mental that the victim suffered.

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(g) The physical and psychological effect the abuse had on the victim; I have just mentioned that.

(h) Whether the offence formed part of organised crime. Whilst there was no direct evidence as to the participation of other individuals in the human and drug trafficking, what did come out during the course of the trial was that the accused had used two of his co-accused as runners or who would go to other drug pushers or drug suppliers to either fetch drugs or ingredients for the drug "rock" that he would make which seemed to indicate that particularly as regards drug trafficking, that it was part of organised crime.

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(i) Whether the victim was a child. All three victims were children when they were trafficked and abused.

(j) The nature of the relationship between the victim

and the convicted person. There is no relationship of family or friends, they were in fact strangers to each other.

(k) The state of the victim's mental health. There has been no victim impact report produced by the state, however, I can without any hesitation conclude that the abuse that the victims were subjected to, both physical, mental, psychological, would have caused those who were otherwise healthy to have suffered severe trauma.

(l) Whether the victim had any physical disability. That does not apply in this case".

Section 4, sub-section 1 of the Trafficking Act creates the offence of "trafficking in persons". As I said, you have been found guilty on three counts of trafficking in persons. The sentence prescribed for a contravention of section 4, is a maximum fine of R100 million or life imprisonment or both.

Life imprisonment must be imposed for a contravention of sub-section 1 if the provisions of the Criminal Law Amendment Act 105 of 1997 are otherwise applicable. Your counsel conceded during submissions in mitigation for sentence that the latter Act, that is the so-called minimum sentence Act, is indeed applicable and therefore life sentences must be imposed for each of those counts unless there are substantial and compelling circumstances to impose a lesser

sentence.

I have considered the submissions of mitigation of sentence and found nothing in your personal circumstances or any other circumstances which are substantial and compelling to impose a lesser sentence than that prescribed.

In brief, your personal circumstances as put forward by your counsel are that you are now 43 years old, in other words, you were already in your early 40's when you commenced with the trafficking of the victims in this case. You  
10 were born in Nigeria. You are the fourth of nine children and you are married with four children who are respectively 22, 17, 9 and 4 years old. You attained matric in Nigeria, your mother died in 2014 and you were raised by both your parents. You spent some 26 months in prison since your arrest on 19 May 2017. You, at the time of the arrest, it was submitted that you were self-employed running a shop and a hair salon at the premises.

I do not accept that entirely as in my view it was merely a front for the conducting of the human trafficking, drug  
20 trafficking and prostitution business that was conducted there.

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## SENTENCE

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Having considered all the factors, the following



sentence is imposed in respect of the three counts of trafficking in persons:

[1] You are sentenced to life imprisonment on each of those counts. I interpose to say that I have disregarded your previous conviction on a count of theft committed on 17/7/2006 and I am treating you as a first offender for purposes of sentence.

[2] You have also been convicted on three counts of using the services of victims of trafficking. Section 7 of the  
10 Trafficking Act provides in respect of conviction of using the services of victims of trafficking a fine or imprisonment for a period not exceeding 15 years or both. I see no reason why I should not impose the maximum term of imprisonment in light of the facts of this case. A sentence of 15 years' imprisonment in respect of each of the three counts is accordingly imposed.

[3] Counts 7, 8 and 9 all relate to the conviction for rape. The victims as I have said, were all minors.

In *S v Chapman* 1997 (3) SA 341 (SCA) at 344J-345B, it was stated and I quote:

20 "Rape is a very serious offence, constituting as it does a humiliating, degrading and brutal invasion of the privacy, dignity and the person of the victim".

Also, in *S v Jansen* 1999 (2) SACR 368 (CPD) at 378G-J, it was stated and I quote:

"Rape of a child is an appalling and perverse abuse

of male power. It strikes a blow at the very core of our claim to be a civilised society. The community is entitled to demand that those who perform such perverse acts of terror be adequately punished and that the punishment reflect the societal censure”.

Again, I find no substantial and compelling circumstances to deviate from the minimum sentence prescribed and you are cordially sentenced to life imprisonment for each of the three counts of rape.

10 [4] Counts 10 and 11 are in respect of sexual exploitation of a child for financial reward. Section 17 (2) of the Criminal Law Sexual Offences and Related Matters Amendment Act 32 of 2007 provides that:

“A person ('A') who unlawfully and intentionally offers the services of a child complainant ('B') to a third person ('C'), with or without the consent of B, for financial or other reward, favour or compensation to A, B or to another person ('D')-

20 (a) for purposes of the commission of a sexual act with B by C; (b) by inviting, persuading or inducing B to allow C to commit a sexual act with B; (c) by participating in, being involved in, promoting, encouraging or facilitating the commission of a sexual act with B by C; (d) by making available, offering or engaging B for

purposes of the commission of a sexual act with B by C; or (e) by detaining B, whether under threat, force, coercion, deception, abuse of power or authority, for purposes of the commission of a sexual act with B by C, is guilty of an offence of being involved in the sexual exploitation of a child”.

Section 56A, provides that if a penalty is not prescribed for that offence in terms of this Act or any other  
10 Act, the Court may impose a sentence in terms of section 276 of the Criminal Procedure Act 51 of 1977 which I will refer to as the CPA. Section 51 (2) (a) of Act 105 of 1997 as amended, the so-called minimum sentence Act, read with part III of schedule 2 thereof, provides that in the case of a first offender, the Court shall sentence the convicted person to a sentence of imprisonment for a period of not less than 10 years.

Again, as I find no substantial and compelling circumstances to deviate from the prescribed minimum  
20 sentence on counts 10 and 11, you are sentenced to imprisonment for 10 years in respect of each count.

[5] Counts 14 and 15 are in respect of living on earnings of sexual exploitation of a child and is an offence in terms of section 17 (5) of Act 32 of 2007. On these two counts, you are sentenced to a term of imprisonment of 5 years on each

count.

[6] Counts 20 is in respect of compelling or causing children to witness sexual offences or sexual acts which is an offence in terms of section 21 (2) of Act 32 of 2007. You are sentenced to 5 years' imprisonment on this count.

[7] Counts 21, is in relation to what is commonly called "fleshing", that is, the exposure or display of or causing exposure or display of genital organs, anus or female breasts to a child and is an offence in terms of section 22 of  
10 Act 32 of 2007. You are sentenced to 5 years' imprisonment on count 21.

[8] Counts 22 is in respect of the offence of compelling or causing persons 18 years or older to witness sexual offences or acts in terms of section 8 (2) of Act 32 of 2007. A term of imprisonment of 3 years is imposed on this count.

[9] Counts 23 is in respect of contravening the provisions of section 9 of Act 32 of 2007 and is what I referred to earlier as "fleshing" but this time it is in respect of a person 18 years or older. A term of imprisonment of 3 years is  
20 imposed.

[10] Counts 24 is in respect of contravention of section 11 of Act 32 of 2007 namely, engaging sexual services of persons 18 years or older. A term of imprisonment of 5 years is imposed.

[11] Counts 25, 26 and 27 relate to kidnapping of the three

victims. The victims were held against their will and kept for at least 6 months or up to a year in the case of the one victim while the other two children were kept for 3 to 4 days. These counts are taken together for purposes of sentencing and you are sentenced to a term of imprisonment of 5 years.

[12] Counts 28 is the charge of keeping a brothel. You are sentenced to a term of imprisonment for 3 years.

[13] Count 29. This is a conviction in respect of dealing in drugs. Drug abuse has been a major scourge of society at large and it is in no small measure due to the promotion of drug use by drug dealers whose only interest is in making money, heedless of the devastation it causes in the lives of the users and their families as well as in society at large causing the crumbling of social and family cohesion. The devastating effect of the use of drugs by the victims has been starkly illustrated or shown in this trial and you sir, have been not only the drug pusher of the drug referred to as "rock" but also its manufacturer. After recruiting the young girls by deceptive means, one of the first things you did, was to get them to smoke rock and make them dependent on it. Then there was the manipulation, the coercion or intimidation of them to do your bidding. The effect of rock was explained by the expert, Mr Marais. He explained how it is rapidly absorbed in the body and creates a craving for it and for which the victim will do almost

anything.

You have been convicted of dealing in a dangerous dependence-producing substance. Section 17 (e) of the Drugs and Drug Trafficking Act 140 of 1992, provides for a maximum term of imprisonment of 25 years or both a fine and imprisonment. In my view, having taken all factors into account, the maximum sentence of imprisonment should be imposed. You are accordingly sentenced to 25 years' imprisonment on this count.

10 [14] Lastly, in terms of sections 40, 42, 43, 49 and 50 of Act 32 of 2007, the particulars of accused 1 must be entered into the national register for sex offenders.

I turn then to accused 2, who has been convicted on count 28 and a competent verdict in respect of count 29, that is, keeping a brothel and possession of dependence-producing drugs respectively. Act 23 of 1957 includes the use of premises for the purposes of prostitution in the rubric "keeping a brothel".

20 You ma'am used the premises of accused 1 for purposes of prostitution. I take into account that you engaged in prostitution to feed your drug addiction. I also take into account that you have been off drugs for about 2 years now and you have recently given birth to a baby. You are also a first offender. The sentence I impose is intended to give you an opportunity to continue living a drug-free life and to provide

your child with a stable family life. It is hoped that you will utilise the opportunity to your benefit.

Both counts are taken together for purposes of sentencing and you are sentenced to a term of imprisonment for 5 years which is wholly suspended for 3 years on condition that you are not found guilty of unlawful possession or use of dependence-producing drugs committed during the period of suspension. The suspended sentence is to be put into effect only if the accused is sentenced to unsuspended imprisonment  
10 of more than 6 months in respect of a subsequent conviction.

Finally, I turn to accused 4 who has been convicted of possession of dependence-producing drugs. Sir, you have two previous convictions relating to abuse of dependence-producing substances and found guilty in 1994 and 2003 respectively.

Whilst previous convictions of more than  
10 years ago, are not taken into account in aggravation of sentence, the Court notes that those convictions are similar to the present one. You were also convicted of drunken driving  
20 which is not relevant for present purposes. I also take note that you have spent about 2 years in prison awaiting trial. Having taken all factors into account, including your personal circumstances, you are sentenced to 3 years' imprisonment which is wholly suspended for 3 years on condition that you are not found guilty of unlawful possession or use of

dependence-producing drugs committed during the period of suspension. A suspended sentence is to be put into effect only if the accused is sentenced to unsuspended imprisonment of more than 6 months in respect of a subsequent conviction.

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**RANCHOD, J**

**JUDGE OF THE HIGH COURT**

10 **DATE:** .....

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