

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: NO.
(3) REVISED: *21/05/19*

DATE

SIGNATURE

Case Number: A82/2018

In the matter between:

CLIVE SEBAKA

APPELLANT

and

THE STATE

RESPONDENT

JUDGMENT

RANGATA, AJ

[1] On 16 October 2017 in the Pretoria Regional Court, the appellant, Mr Clive Sebaka, was convicted by Regional Magistrate Ms Labuschagne for an offence contravening the provisions of section 36 of the General Law Amendment Act 62 of

1955, having been found in possession of stolen property. The appellant was legally represented throughout the trial.

[2] The appellant was charged with having been found in the unlawful possession of goods other than stock or produce as defined in section 1 of the Stock Theft Act 57 of 1959, in that, on 28 August 2015, at or near Wierdabrug, Gauteng, the appellant was found in possession of the following stolen goods: Plasma TV, 2 Laptops, Samsung tablet, computer wires, black laptop bags, Nokia Cell phone, Sony TV remote control, black box containing jewellery and a small jewellery box containing a gold chain with a cross.

[3] The appellant pleaded guilty to the offence and submitted a statement in terms of section 112(2) of the Criminal Procedure Act, 51 of 1977: He admitted to having been found in possession of the aforementioned stolen goods. He could not give an explanation for being in possession of such goods and stated that he had a reasonable suspicion that the items were stolen.

[4] The appellant was convicted and sentenced to eight years' imprisonment, half of which was suspended for five years on condition that he is not convicted of theft or attempted theft or contravention of section 36 or section 37 of the General Law Amendment Act 62 of 1955, committed during the period of suspension. The appeal is against conviction only.

[5] It was submitted on behalf of the appellant that the admission to the effect that he had a reasonable suspicion that the goods were stolen, is defective in that the appellant could not have admitted that he had a reasonable suspicion that the goods were stolen. It was therefore contended that the learned Magistrate erred in convicting the appellant and that the matter should be remitted back to the trial court.

[6] The respondent argued that the appellant had voluntarily and freely pleaded guilty to having been found in possession of stolen goods. He further admitted that, at the time when the goods were found in his possession, he knew that they were stolen and had no reasonable explanation for their possession. It was therefore submitted that the appellant admitted the necessary elements of the offence.

[7] The principle issue is whether the appellant's plea of guilty complied with the elements required for conviction under section 36 of the General Law Amendment Act. This section reads as follows:

"Any person who is found in possession of any goods, other than stock or produce as defined in section 1 of the Stock Theft Act, 1959 (Act 57 of 1959), in regard to which there is reasonable suspicion that they have been stolen and is unable to give a satisfactory account of such possession, shall be guilty of an offence and liable on conviction to the penalties which may be imposed on a conviction of theft."

[8] In *Osman and Another v Attorney-General*, Transvaal 1998(4) SA 1224 (CC), Madala J made reference to the following comment by the Court *a quo* (*S v Osman and Another v Attorney-General*, Transvaal 1998(1) SACR 28 (T) wherein McCreath J stated that :

"The circumstances of a particular case may of course be such that an explanation will be required of the person's possession of the goods in order to avoid a conviction under the section and that explanation can only be given by that person himself or herself. Such person still has an election whether to give an explanation or risk the consequences. The necessity to give a satisfactory account to avoid conviction is in that event not created by section 36 itself but by the circumstances of the particular case. Section 36 compels nothing. It is a misfortune inherent in the case. So also if the account required to be given involves an admission or confession to a crime on the part of that person. The situation is analogous to that which may arise in any criminal case at the end of the state case. Sufficient evidence may have been advanced by the prosecution at that stage to require a satisfactory explanation from the accused, which is reasonably possibly true, if he is to avoid conviction. His right to remain silent has not been impinged upon by any statutory provision in conflict with the Constitution. The circumstances of the case against him are such that he exercises his right to silence at his peril."

[9] In terms of section 36 of the General Law Amendment Act, for an accused to be convicted, he must have been found in unlawful possession of the goods; there must have existed a reasonable suspicion in the mind of the finder that the goods were stolen and the accused must have been unable to give a satisfactory account for the

possession of such stolen goods. The requirement for the reasonable suspicion in the mind of the finder that the goods are stolen is subjective as the assumption could be made given the conduct of the accused.

[10] The submission on behalf of the appellant that his plea is defective because of the inclusion in his statement that he had a reasonable suspicion that the goods were stolen, has no merit, particular in light of his own admission that the goods found in his possession were stolen.

[11] I have considered the statement of the appellant in totality. He could not explain his possession of the stolen goods and admitted that when the goods were found in his possession, he knew that they were stolen goods. This much is clear from his statement:

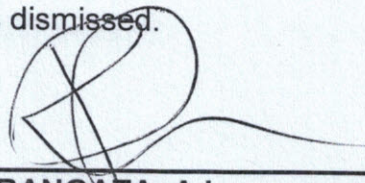
"[9] I admit in that I knew that my actions were wrong, and I intentionally possessed these goods with the intention of depriving its owners the right to ownership for good....

[10] I do not have any defence for being found in possession of stolen property, and that I could be criminally prosecuted and convicted as a result of my conduct".

[12] I am therefore satisfied that the admission by the appellant satisfies the necessary elements for conviction under section 36. The admission was made freely and voluntarily, appreciating the consequences of his actions and is sufficient for a conviction. The learned Magistrate therefore correctly convicted the appellant.

[13] In the circumstances I propose the following order:

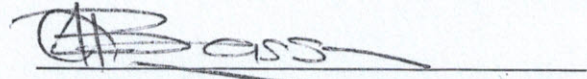
The appeal against conviction is dismissed.



B RANGATA, AJ

ACTING JUDGE OF THE HIGH COURT

I agree

A handwritten signature in black ink, appearing to read "AC Basson", is written over a horizontal line.

AC BASSON, J

JUDGE OF THE HIGH COURT