KWINKUNDLA EPHAKAMILEYO YOMZANTSI AFRIKA
(ICANDELO LENKUNDLA YECAPE OF GOOD HOPE)

[IYABIKEKA]

ITYALA ELINGUNOMBOLO: A639/2003

Kwityala eliphakathi kuka:

MANEKATI GOQA Ofake isibheno

kunye

NOMBUSO Umgwebi

ISIGWEBO SIKHUTSHWE MHLA ZIYI12 KWINYANGA KA NOVEMBA 2004

Hlophe, uMongameli weejaji

UMnumzana Goqa uvele kulenkundla wayebekwe ityala lokudlwengula. Waye wafumaniseka enetyala uMnumzana Goqa emva kokuba ityala lakhe lithethwe yinkundla yaseRegional Court, yamgweba iminyaka elishumi. UMhlekazi Goqa namhlanje uvela kule nkundla phambi kwethu efake isibheno malunga nesigwebo sakhe seminyaka elishumi.

Malunga nomba wokuba efumaneke enetyala wagwetywa egwetywelwa ukudlwengula asikho isibheno. Silapha ke sizijaji, mna noMhlekazi lo uZondi esichophele kunye esisibheno, siye sayifunda yonke irekhodi, sanelisekile yinto yokuba lomhlekazi wadlwengula nyani. Naxa sijonga ijudgment yenkundla yeRegional Court, icacile loo nto ukuba ijudgment isemgangathweni iyabonisa into yokuba wadlwengula umhlekazi. Ngokucacileyo ngoko ke asinakho ukuthetha ngento yokuba wadlwengula okanye akazange adlwengule kuba icacile wadlwengula.

Inye qha into esinokuthetha ngayo namhlanje, imalunga nesentence. Mhlekazi, ityala lokudlwengula yinto embi kakhulu kwaye imasikizi. Xa sijonga indlela inkundla le yeRegional Court eyijonge ngayo yonke lento loo nto icacile ukuba noko bayijonge kakuhle, nesigwebo sakhe seminyaka elishumi noko asinakuthi asifanalekanga. Kaloku asinakuvele sithi hayi esi sigwebo sikhulu okanye sincinci, okanye thina asisithandi. Ngokomthetho sisenokuphazamisana

nesigwebo xa singafanalekanga, oko kukuthi sisikhulu kakhulu, okanye sisincinci kakhulu. Xa usijonga esisigwebo seminyaka elishumi kwityala lokudlwengula noko akubonakali singafanalekanga.

Njengokuba uRumpff J wayetshilo kwityala lika ***S v Zinn*** **1969 (2) SA 537 (A)**, at 541 F "in trivial cases indeed Judges ought to be more inclined to mildness, but in more serious cases to follow the severity of the laws with a certain moderation of generosity". Kwaye uHolmes JA yena kwityala lika ***S v V*** **1972 (3) SA 611 (A)** wathi "Punishment should fit the criminal as well as the crime, be fair to the accused and the society, and be blended with a measure of mercy; … The element of mercy, a hallmark of civilised and enlightened administration, should not be overlooked, lest the Court be in danger of reducing itself to the plane of the criminal…"

Ukudlwengula nokuhlukumeza abasetyhini akwamkelekanga. Okulindelekileyo emadodeni kukukhusela amalungelo abafazi. Inkundla noko iye imbonelele ummangalelwa malunga nesigwebo xa imeko ivuma. Naxa kunjalo, inkundla ayinakumthethelela umntu odlwengule umfazi kwimeko ezimasikizi.

Ngokokwamukubona isibheno sakho malunga nesigwebo (isentence) noko asinakuphumelela kulenkundla. Nasi isigwebo senkundla, isibheno sakho siyasichitha.

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Hlophe, JP

Ndiyavumelana nawe

Zondi, AJ