IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE HIGH COURT, CAPE TOWN

CASE NO: A325/07

In the matter between:

HENDRIK VAN ZYL **Appellant**

and

THE STATE **Respondent**

JUDGMENT : THURSDAY 2 DECEMBER 2010

GAMBLE, J:

INTRODUCTION

[1] The Appellant was charged in the Regional Court with various offences linked to the ultimate demise of the Seven Eleven Corporation (Pty) Ltd ("the Corporation") in the Western Cape. The Corporation, which was run by the late George Hadjidakis, owned and operated (through a franchise system) a large number of suburban convenient stores primarily in the Western Cape. By way of example, the Appellant had a store in the suburb of Richwood (near Milnerton) which was owned by him and run under franchise with the Corporation. As a franchised business the Appellant was required to pay franchise fees to the Corporation and also to buy his stock from the Corporation at fixed prices.

[2] Hadjidakis was a tough business man (some of the witnesses suggested that ruthless was the more appropriate epithet) who ran his business with an iron fist. The way

in which he went about the corporation's affairs brought him into conflict with many of the store owners and franchisees, to the extent that by early 2001 there was significant strain between Hadjidakis and many of the franchisees. The basis for that tension is not really material to this matter, other than for the detail which will follow hereunder.

[3] During the period May 2001 to March 2002 Hadjidakis received various death threats, threats of arson, and other forms of blackmail. These threats were mostly in the form of letters but there were also telephone calls made to his office and/or his cell phone.

[4] Towards the end of 2001 a number of Seven Eleven stores were torched, many of which burnt down completely. Arson was suspected in the light of the threats which had been made to, *inter alia*, Hadjidakis. Thereafter a number of store owners were contacted telephonically and threatened that if they did not desist from paying certain monies over to Hadjidakis, their stores too would be burnt down.

[5] Ultimately, with its business in disarray, the Corporation went into liquidation and later arose like Phoenix from the ashes to become the "*Friendly Seven Eleven Store*" chain.

[6] The Appellant was charged with twelve offences relating to the above scenario:

(1) Charges 1 and 2 were charges of attempted blackmail;

(2) Charges 3-7 were charges of intimidation; and

(3) Charges 8-12 were charges of arson.

The trial commenced in July 2003 in the Regional Court, Parow, where the Appellant pleaded not guilty to all the charges put to him. The matter then proceeded over a three year period with various attorneys representing the Appellant and ultimately him

representing himself, before he was convicted on 24 October 2006 on ten of the twelve charges. He was acquitted on count 1 (attempted blackmail) and count 5 (intimidation). The Appellant was sentenced to direct imprisonment, the cumulative effect whereof was that he was to serve eight years imprisonment – effectively the sentences imposed on counts 8-12 (arson).

[7] The Appellant appeals against both the convictions and sentence.

[8] In the Court *a quo* the evidence against the Appellant was purely circumstantial:

(1) In respect of the blackmail charge he was allegedly linked by DNA;

(2) In respect of certain of the intimidation charges he was linked by the use of certain Telkom telephone cards which were found at his home; and

(3) In respect of the arson charges the State attempted to establish that the logical conclusion of the campaign of intimidation and blackmail was to effect the destruction of the buildings referred to in the various charges, the last of which was the Appellant's own shop.

In respect of the latter, the State sought to link the Appellant by virtue of certain allegedly unusual events which occurred shortly before the building was burnt down.

[9] For the sake of convenience I will approach the matter somewhat differently to the magistrate and will commence at the end, as it were.

CHARGES 8-12: ARSON

[10] The following counts were put to the Appellant in relation to the arson charges:

(1) On 30 November 2001 a second store in Richwood (referred to in evidence as "Richwood 2") belonging to George Meiring burnt down;

(2) On 11 December 2001 a store in Bellville belonging to George Tsombanellis burnt down;

(3) On 21 December 2001 a store in Stellenberg belonging to Cornelius Carsten was partially burnt;

(4) On 29 January 2002 a store in Parow belonging to Elna Hurter bunt down; and

(5) During the night of 25-26 February 2002 the Appellant's store (referred to in evidence as "Richwood 1") was destroyed by fire.

[11] As I have stated above, the Appellant could not be linked directly to the destruction of any of these stores. In fact, in some respect the evidence revealed the existence of other persons. So, in respect of count 9 (the Bellville Store) a man with longish blonde hair (clearly not the Appellant) was seen running away from the store by a passer-by shortly after the conflagration had commenced. The person was never identified and was not linked to the Appellant in any way at all.

[12] In respect of the Stellenberg Store the evidence was that the front door of the store had been forced open (presumably by a motor vehicle which had attempted to bulldoze open the sliding doors), an incendiary substance had been thrown in through the gap and ignited. Once again the perpetrators were not identified and there was no evidence to link this incident to the Appellant.

[13] The destruction of the Parow Store occurred at around 04h30 in the morning and the

owner (Ms Hurter) was contacted telephonically by someone who wished her "*a nice morning*" after the store had burnt down. This call could not be linked to the Appellant. Furthermore, Ms Hurter testified that on the previous evening, a young blonde man carrying a crash helmet had come into the store on the pretext of discussing a new burglar alarm system for the premises. Although the visit was extremely suspicious, the man in question could not be linked to the Appellant and his conduct remained that – simply suspicious.

[14] In regard to the fire at his own store (Richwood 1) witnesses gave evidence that shortly before the store burnt down the Appellant removed the closed circuit television system from the store. It was also noted that on the night before the incident, the Appellant had stayed later than usual at the store and was seen packing large quantities of Nescafe instant coffee in the store room. This conduct (given that Nescafe is evidently an expensive brand of coffee) was regarded by some as suspicious. Finally, there was evidence that when the Appellant discovered that his store insurance had lapsed he was visibly shocked. While this evidence may point to his involvement in the destruction of the premises, it is equally consistent with the response of one who has "lost everything" through the absence of adequate insurance cover.

[15] In summary, then, on the arson charges, there are certainly suspicious circumstances which suggest the possible involvement of the Appellant in relation to his own store. Other than that, the evidence points directly to the involvement of other persons (in particular a blonde man) and a red Nissan or Mazda motor vehicle with a North West Province registration number which was seen in the vicinity of one of the fires, neither of which could be linked to the Appellant.

[16] Counsel for the State readily conceded during argument before us that there was a

paucity of evidence against the Appellant (even circumstantial) in relation to the arson charges.

[17] In my view the Appellant was wrongly convicted in relation to the arson charges and his convictions in respect of charges 8, 9, 10, 11 and 12 fall to be set aside.

ATTEMPTED BLACKMAIL

[18] Originally the Appellant was charged with two charges of attempted blackmail in that during the period 23 May 2001 to 6 March 2002 Hadjidakis was contacted on a number of occasions telephonically, initially with death threats and later, once the incidents of arson had occurred, with threats of robbery and further arson. In addition to telephonic threats, a number of letters were sent to Hadjidakis, some of which were written in manuscript and others which were inelegantly typed in a short, perfunctory telegram style using similar phrases in various letters.

[19] During the period 23 May 2001 to 1 June 2001 it was alleged that certain death threats were made to Hadjidakis which were contained in two letters, the first of which read as follows (I reproduce the document in its original form):

(1) *"I have been paid R250 000,00 to take you out. Do you want to offer more. Your secretary can say yes or no to the above answer and give me your cell number in order to arrange."*

The letter was signed by one "Greg Norman"- perhaps a jocular reference to the famous Australian golfer.

(2) *"I got the cassette of the talks to kill you: you can buy for R300,00: I have to*

please my master to teach you lesson: will soon call"

That letter was signed simply by "Greg".

[20] In respect of count 1 there was nothing to link the Appellant to the threat and he was duly acquitted by the Regional Magistrate.

[21] In respect of count 2 it was said that an attempt had been made to blackmail Hadjidakis by telling him that the robbery and arson would not stop until an amount of R900 000,00 had been paid over. These threats were contained in a number of letters, initially hand written and later typed, and which were sent to the Corporation's headquarters marked for the attention of Mr Hadjidakis.

[22] Through some deft detective work, one of the envelopes containing such a threatening letter was subjected to DNA analysis. That analysis showed that the Appellant's saliva had been employed to seal the envelope – presumably he had licked same before closing it. The document was placed before the Court *a quo* as Exhibit J and was purportedly date stamped 24 January 2002.

[23] The contents of Exhibit J read as follows (once again I reproduce the document exactly as it appears from the record):

"I leave message you must drop money … your secretary answer RULES; (1) you go alone (2) money in bags (3) used money (4) You will be surrounded by armed people in cars (5) when you get called to stop and drop…stop drop (my people will pick up) and drive on towards Worcester where you will get another call.. and meet me..when do all these..action against you will stop but first another lesson pick up your own phone..now you owe us R1,4…if money ready for

drop…send email "shop will be upgraded soon""

[24] The blackmail threat contained in Exhibit J is self evident. But that is not the end of the matter. Exhibit J follows upon various other documents, all in a similar type-face although certain letters were typed exclusively in upper case. If one has regard to exhibit C, which is date stamped 23 December 2001 one sees the commencement of a series of threats:

> *"THE LAST STORE WAS A WARNING..I TOLD YOU NO TRICKS..IF MY ASSISTANT (HARRY D'OLIVIEA) PHONE DO NOT WAIST HIS TIME..GIVE HIM YOUR CELL NUMBER THAT YOU WILL HAVE WITH YOU DURING DROP OFF..BE READY..DROP OFF WILL BE ON 24/25 OR 26 DES..WE WILL BE MEETINIG YOU IN WORCESTER..EVEN IF YOU DROP THE MONEY EARLIER..WE WILLL STILL MEET IN WORCESTER…DISOBYING ANY ORDER WILL MEEN ONE THING..NOW IT IS R995 000,00…IF YOU TRY ANYTHING ELSE..IT WILL BE R1,1M..AND THE NEXT STORE WILL BE A PROPER 1 AGAIN.."*

I pause to point out that the spelling mistakes and poor grammar contained in this exhibit (and various of the others) suggest that English may not be the first language of the author thereof.

[25] I do not propose to recite the contents of all of the letters sent to Mr Hadjidakis. Suffice it to say that there is a pattern of threats contained therein which demonstrate knowledge on the part of the author of the inner workings of the franchise system of the Corporation, as also knowledge of the fact that certain stores belonging to, or associated with, the company had burnt down.

[26] It is arguable of course that the author thereof may have read about the destruction of the businesses in the newspaper and was simply joining in or jumping on the band wagon, as it were. However, I am inclined to think that it is more likely than not that the author of the letters was the same person, or at the very least, a member of a group of persons who were acting in concert in an attempt to extort money from Mr Hadjidakis by threatening arson and robbery of other Seven Eleven outlets.

[27] In argument before us Mr Bruinders for the Appellant conceded that the co-called "DNA chain" was in order and that it could not be disputed that the Appellant's saliva was found on one of the letters in this series. In the absence of any explanation by the Appellant as to how his saliva came to be on the envelope in question, I am satisfied that the evidence establishes, beyond reasonable doubt, that the Appellant was at least a participant in one of these attempts and that he was correctly convicted on count 2. In this regard it will be noted that there is a commonality in the language and threats used in the documents. Further the subsequent documents follow on from threats and allegations contained in the earlier documents and it is clear that there was a pattern of conduct aimed at increasing the pressure sought to be imposed on the recipient. The only logical conclusion therefore is that the threats were intended to constitute a persistent attempt to blackmail Mr Hadjidakis and the only reasonable inference in the circumstances is that Appellant was party to this.

[28] I turn finally to the five charges of intimidation. As I have noted above, the Appellant was acquitted on count 5 and nothing more need be said in that regard. The substance of the remaining charges relates to various threats made to the proprietors of certain Seven Eleven outlets extending from Malmesbury and Paarl to Brackefell, Kraaifontein and

Bellville. The threats were made telephonically to the proprietors or managers of the relevant stores and were threats to the effect that if the proprietor paid certain fees which were due to the Corporation, the relevant store would be burnt down, or put differently, the store would not be burnt down if the fees were not paid.

[29] The ultimate purpose of these threats was to cause financial harm to the Corporation by the withholding of monies due to it.

[30] The crime of intimidation is a statutory one in accordance with the provisions of Section 1 of the Intimidation Act no. 72 of 1982. The legislation was originally introduced in the context of addressing acts of political violence in the early 1980's and was extensively used in that context. It is, however, still on the statute book and reads as follows:

> "*1.* ***Prohibition of and penalties for certain forms of intimidation.***
>
> *(1) Any person who –*
>
> *(a) without lawful reason and with intent to compel or induce any person or persons of a particular nature, class or kind or persons in general to do or to abandon from doing any act or to assume or to abandon a particular standpoint -*
>
> *(i) assaults, injures or causes damage to any person; or*
>
> *(ii) in any manner threatens to kill, assault, injure or cause damage to any person or persons of a particular nature, class or kind; or*
>
> *(b) acts or conducts himself in such a manner or utters or*

publishes such words that it has or they have the effect, or that it might reasonably be expected that in natural and probable consequences thereof would be that a person perceiving the act, conduct, utterance or publication -

(i) fears for his own safety or for the safety of his property or the security of his livelihood, or for the safety of any other person or the safety of the property of any other person or the security of the livelihood of any other person;

shall be guilty of an offence and liable on conviction to a fine not exceeding R40 000,00 or to imprisonment for a period not exceeding ten (10) years or to both such fine and such imprisonment.

(2) In any prosecution for an offence under sub-section 1, the onus of proving the existence of a lawful reason as contemplated in that sub-section shall be upon the accused, unless the statement clearly indicating the existence of such lawful reason has been made by, or on behalf of the accused for the close of the case for the prosecution."

[31] It will immediately be obvious that the wording of Section 1(1)(a) of the Intimidation Act (the section with which the Appellant was charged) was formulated in particularly wide terms – sufficiently wide to cover the allegations made *in casu*. It will further be observed that the wording of the Act does not require that the person(s) to whom the threat of violence, injury or damage to property is made needs to be shown to have responded thereto. Accordingly, where a witness says that he/she did not take the threats seriously, in

my view does not mean that the person making the threat cannot be convicted under the section in question.

[32] It is therefore necessary to consider all four charges of intimidation against which appeals were noted i.e. charges 3, 4, 6 and 7 before the Court *a quo*.

[33] The State adduced evidence of various Telkom officials to attempt to link the Appellant to the communication of the four threats which formed the basis of each of the said charges.

[34] Pursuant to a search warrant issued to the police, certain Telkom telephone cards were found on the Appellant's residential premises. Three such cards were found in the bedroom of the Appellant's fifteen year old son (two of them in the son's wallet) and one on a cabinet. A fourth card was found in an Opel Kadet motor vehicle parked in the garage and belonging to the Appellant.

[35] These telephone cards are customarily purchased at a variety of retail outlets (including Seven Eleven stores) and enable the user thereof to make calls from Telkom call-boxes specially designed for that purpose. The evidence before the court *a quo* was that each card has an identifying number and through a computerised program it is possible to establish when the card was used, at which call-box the call was made and to what telephone number (either landline or cell) the call was directed. The duration of any call made can also be established.

[36] It would appear that various of the Seven Eleven Franchises have landline numbers that end with the digits "711" – evidently this is by design. Mr Hadjidakis' cell number also ends with these digits. Perusal of the various print-outs relating to the four Telkom phone

cards show that a host of calls were made to various Seven Eleven outlets with these cards during December 2001 and January to February 2002, including those referred to in relation to the intimidation charges.

[37] The telephone card found in the Opel Kadet (with reference TGBB 17314576932) was shown to have made two calls (27 February 2002 and 6 March 2002) to a cell phone number (0836296711) belonging to Mr Hadjidakis. Another four calls were made on 21 February 2002, one of which was directed to the Seven Eleven Store in Bellville (referred to in count 7).

[38] The telephone card with reference TGBC 174505675898 (which was found in the Appellant's son's room) was used to make, *inter alia*, the following calls:

(1) On 23 January 2002 to the cell phone no. of a Mr Havenga, a friend of the Appellant. Mr Havenga confirmed this call which was made from a call-box close to the High Court building – at the corner of Wale and Queen Victoria Streets, Cape Town.

(2) At 12:35 pm on 18 February 2002 a call was made to landline no. 021 982 3711. This is the number of the Seven Eleven store in Brackenfell and corresponds with the date of the call referred to in charge 3.

(3) At 3:33 pm on the same day a call was made to landline no. 022 482 3711, which is the number of the Seven Eleven store in Malmesbury. This corresponds with the date of the call referred to on charge 4.

(4) At 3:46 pm on the same day a call was made to landline no. 021 872 0711. This is the number of the Seven Eleven store in Paarl and corresponds with

the date of the call referred to in charge 6.

[39] The Appellant strenuously denied using the four phone cards in question and suggested that his son may have picked them up when visiting the Richwood 2 store of the Appellant. He said that people often brought in defective cards for reimbursement and attempted to explain away the repeated use of the cards to Seven Eleven numbers in this fashion.

[40] The Court *a quo* found that the Appellant was a poor witness whose explanations were not reasonably possibly true. I agree with the Regional Magistrate's credibility findings, by which we are bound given the circumstances of this case. The use of one of the cards to call Mr Havenga is obvious proof that the Appellant had that card in his possession on 23 January 2002. This was, of course, the card that was found in his son's room. Clearly the Appellant had either secreted the card there or given it to his son to keep for him when the search of his house was conducted.

[41] Further we know that the card found in the Opel Kadet was used to phone Mr Hadjidakis twice and also the Bellville store which was the subject of an intimidatory threat. It is inconceivable that the Appellant's son would have made these calls and certainly no reason therefore was advanced.

[42] In my view the Court *a quo* correctly held that the only reasonable inference was that the Appellant had utilized the cards in question. Indeed, the evidence is overwhelming. I am accordingly satisfied that it was the Appellant who made the intimidatory calls which formed the basis of charges 3, 4, 6 and 7.

[43] The next issue then is whether the intimidatory threats made during these phone calls fall foul of the statute. I shall deal with each count separately.

[44] In respect of count 3 the State alleged that the substance of the threat towards the complainant, Mr Sebastian Klue, was that unless he did not pay his so-called "CPC" fees to the Corporation, his business (i.e. the Brackenfell Seven Eleven store) would be burned down. The "CPC" fees are a component of the franchise agreement and relate to the account payable in respect of goods which a store owner is obliged to buy from the Corporation.

[45] Mr Klue testified that on 18 February 2002 between midday and 13h00 he received a phone call on the landline 021 982 3711. This time accords with the call made by the Appellant on the Telkom card referred to in paragraph 35 above.

[46] He testified that the call was made by a person speaking with the accent of an African male in broken English. Mr Klue said that the person spoke incoherently and that he did not properly understand what was being said to him. He said that words to the effect of "tell George, pay CP or I will burn your store down" were uttered. He understood the reference to "CP" to relate to the CPC fees and "George" to be a reference to Mr Hadjidakis.

[47] Mr Klue said in his evidence-in-chief that he paid no attention further to the threat which he regarded as ridiculous ("belaglik"). That, with respect, should have been the end of the matter on this charge. Under cross-examination, he testified that his impression was

that the caller was intentionally disguising his voice but, more importantly, that the threat was senseless: it was directed at "George" not paying the CPC fees whereas the responsibility to pay was his, as a store-owner.

[48] In my view, therefore, the State failed to prove that there was a threat made vis-à-vis Mr Klue which was intended to induce him to take up a particular view or to take up a particular course of conduct. He should therefore not have been convicted on this count and the conviction falls to be set aside.

[49] In respect of count 4 it was alleged that on 18 February 2002 the Appellant threatened Martha Kock that she should not pay money to George Hadjidakis lest her store (the Malmesbury Seven Eleven) be burned down.

[50] Ms Martha Kock testified on this count and said that on 18 February 2002 at around 5h15 she received a call on her landline number 022 482 3711. The caller was an English-speaking male who spoke quickly and loudly. He said words to the effect of "Harry" and "not to pay".

[51] Ms Kock said that she thought it was someone calling from the Corporation's Head Office and she told him that, as it was a Monday, she would be paying the monies due to the Corporation. She did not really understand what the man was trying to convey to her due to the incomprehensible nature of the call.

[52] Ms Kock went on to say that she was briefly called away from the phone by an employee and that she asked the caller to hold on. She did not put down the handset and

when she returned to the phone the man said "You don't understand. Tell George Hadjidakis if you pay him, I'll burn your shop down!".

[53] The person sounded angry and spoke quickly in a gruff foreign accent which she classified as Greek. Ms Kock was not asked in her evidence-in-chief to describe her response or state of mind when she received this call.

[54] Ms Kock was clearly not perturbed by the call because she said that, although her husband had not yet paid the monies in question on the day of the call, they were indeed paid later. She said that she regarded the call as a reminder from the Corporation that there were monies due to it and that these were then paid.

[55] The evidence of Ms Kock establishes that she in no way felt threatened by the call. In light of the wide wording of Section 1(1)(a) of the Act to which I have referred above, the actual state of mind of the person to whom the threat is conveyed is not relevant. Rather, the Act contemplates an objective assessment thereof – the purpose of the Act being to criminalize the threat *per se* rather than the consequences thereof.

[56] Whatever may have been said initially, the words uttered to Ms Kock (as set out in para 52 above) were obviously intended to persuade her not to pay CPC fees to the Corporation, thereby causing it financial harm or embarrassment. It follows that the Appellant was correctly convicted on this count.

[57] Turning to count 6, the substance of the charge was that on 18 February 2002 Mr Wesley Swart (proprietor of a Seven Eleven store in Main Road, Paarl) was threatened that

his store would be burned down if he paid his CPC account.

[58] Mr Swart testified that he received a telephone call on 18 February 2002 at approximately 15h40 on his landline number 021 872 0711. As pointed out above this call is one of those made with the Telkom card found in the Appellant's son's room.

[59] The caller was a male with a gruff voice who spoke English. He claimed to be phoning on the instructions of Mr Hadjidakis. He told Mr Swart that it was not necessary for him to pay his CPC account. When Mr Swart attempted to engage further with the caller he was told that, in the event that he paid, his shop would be burned down.

[60] Mr Swart said that at the stage that he received the call his CPC fees had already been paid earlier that day – it was a Monday and they were then due. He said that his immediate response was to regard the phone call as a hoax but at the same time he did give consideration to the fact that his store was not insured at the time.

[61] For the same reasons as set out in regard to count 4 above, I am of the view that the State established beyond reasonable doubt that the Appellant was guilty of the act of intimidation alleged in count 6. It follows that the Appellant was correctly convicted on this count.

[62] Finally, I turn to count 7 in which it was alleged that on 21 February 2002 Mr Peter Klue of the Seven Eleven store in Barnard Street, Bellville was threatened not to pay his account with George Hadjidakis, failing which his store or his home would be burned down. Mr Klue testified that the threat was conveyed telephonically to him shortly after15h00 on

21 February 2002 by a caller who phoned him on his landline number 021-946 2711. This call, as stated earlier, was made with the Telkom phone card found in the Opel Kadet. Like the other witnesses the caller's voice was described as gruff, speaking English with a Greek or Portuguese accent. Mr Klue went on to say that the caller may have disguised his voice. The words uttered were to the effect that "if you pay George we will burn down your shop and your house".

[63] Mr Klue said that the caller gave no indication of the accounts which he was not supposed to pay but since all that were payable were the CPC accounts, the conclusion was inevitable. He said that he was concerned about the threat because a number of Seven Eleven stores was burned down shortly before that. Nevertheless, his was undeterred by the threat as his business continued as usual.

[64] As with counts 4 and 6, the fact that Mr Klue was not alarmed by the threat made to him telephonically is irrelevant. In my view the threat was sufficient (viewed objectively) to constitute a contravention of Section 1(1)(a) of the Act. It follows that the appeal against the conviction on count 7 must fail.

[65] It follows from the afore going that the appeal against the convictions on counts 3, 9, 10, 11 and 12 should be upheld while the appeal against the convictions on count 2, 4, 6 and 7 should fail.

[66] In sentencing the Appellant the Court *a quo* imposed a period of direct imprisonment of three years on count 2. The sentence on the intimidation charges, which were taken together for purposes of sentence, was two years imprisonment. As regards the five counts

of arson upon which the Appellant was convicted, these too were taken together for the purposes of sentence and a sentence of eight years imprisonment was imposed. The Court ordered that all of the sentences should run together so that the cumulative effect thereof was eight years.

[67] Because of the extent of the convictions the Court *a quo* was clearly (and correctly in my view) influenced by the enormity of the crimes in considering sentence. In my view that fact alone should entitle this Court to consider sentence afresh. But, in any event, because the sentence that I consider appropriate differs markedly from the sentence imposed by the Regional Magistrate, I am of the view that this Court is entitled to interfere.

[68] The evidence before the Court *a quo* was that the arrest of the Appellant and the protracted trial had had a devastating effect on him and had practically destroyed his life. He and his wife were divorced shortly after the trial commenced and she and their two children have moved overseas.

[69] The appellant said that he was unemployed and that he lodged in a room with an old woman in Vredenburg. He was busy studying for his LLB in October 2006 when he was sentenced. The Appellant's business had been destroyed in the fire and he had been reduced to penury.

[70] The Appellant has a pervious conviction for theft in 1995 when he was sentenced to a fine of R400,00/40 days imprisonment. Clearly that was not a particularly serious case.

[71] Regarding the crime itself, the amount which the Appellant attempted to extort from

Mr Hadjidakis was large – R900 000,00. However, it seems as if Mr Hadjidakis did not take the matter very seriously as no concerted attempt was made to pay anything over.

[72] Similarly, in respect of the intimidation counts, none of the witnesses was particularly alarmed by the threats and some even thought that it was all a bit of a joke.

[73] One cannot lose sight either of the fact that the Appellant was probably caught up in a campaign with others aimed at causing economic rather than physical harm to Mr Hadjidakis because of general dissatisfaction with the way in which he conducted the Corporation's affairs to the detriment of the franchisees.

[74] In my view it is unlikely, given his present circumstances, that the Appellant will easily become embroiled in this sort of crime again. Consequently, I do not believe that this matter warrants direct imprisonment. In respect of count 2, I consider that a fine coupled with a suspended sentence of imprisonment will adequately address the gravity of the offence, the interests of society and the personal circumstances of the Appellant. As far as counts 4, 6 and 7 are concerned I am of the view that a suspended sentence will achieve the objectives of sentencing.

[75] In the circumstances I would make the following order:

(A) The appeal against the convictions on counts 3, 8, 9, 10, 11 and 12 is upheld and the convictions and sentences on those counts are set aside.

(B) The appeal against the convictions on counts 2, 4, 6 and 7 is dismissed and the convictions on these counts are confirmed.

(C) The sentence on count 2 is set aside and replaced with the following:

> "The accused is sentenced to a fine of R5 000 (five thousand rand) or 6 (six) months imprisonment and a further 18 (eighteen) months imprisonment, the latter being suspended for a period of 3 (three) years on condition that the accused is not convicted of blackmail or extortion during the period of suspension."

(D) The sentence on counts 4, 6 and 7 is set aside and replaced with the following:

> "The counts are taken as one for the purposes of sentence. The accused is sentenced to 6 (six) months imprisonment which is suspended for 3 (three) years on condition that he is not convicted of a contravention of any of the provisions of Act 72 of 1982 during the period of suspension."

P.A.L. GAMBLE, J

I agree. It is so ordered.

A.H. VELDHUIZEN, J