IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: A648/2010

DATE: 4 MARCH 2011

In the matter between:

MONGEZI KLAAS Appellant

and

THE STATE Respondent

J U D G M E N T

OLIVIER, AJ:

This is an appeal against the sentence imposed pursuant to a plea of guilty on a charge of arson committed on 2 February 2008. The appellant was sentenced on 21 July 2008 to five years imprisonment and he now appeals against the sentence imposed. In his plea-explanation made in terms of section 112(2) of the Criminal Procedure Act 51 of 1977, the appellant admitted that on 2 February 2008, and with the intent to injure Pricilla Ngqukwana in her property by setting fire to and destroying her house. He admitted that he had proceeded to

her house, that he had waited for her, but that she never arrived. He decided to burn down her home and personal belongings. He stated that he had burnt down her house because the relationship between them had soured and he was angry with her.

No evidence was adduced after the conviction and both the appellant and the State relied upon *ex parte* submissions made from the bar. The appellant's legal representative submitted from the bar that the appellant was 48 years old, still married to the complainant and has been so for the past 20 years, though they were separated. He is a first offender. He had achieved Standard 4 at school and he had been employed prior to his arrest. The complainant had lost her home and all her personal belongings. It was admitted that he harboured resentment towards the complainant and that they no longer had a proper, good relationship.

The State, in turn, submitted from the bar that an interdict had been obtained against the appellant by the complainant, that he had breached the interdict, burgled her home and had abandoned his application for bail in the face of the resistance thereto by the complainant. It was also submitted that this was the second time that he had attempted to burn the home down. The damage resulting from the arson was

approximately R20 000,00.

The learned magistrate did find that it was an aggravating circumstance that the complainant had been experiencing problems for a considerable period of time and the fact that the appellant would not accept the relationship had broken down. The learned magistrate had regard to the *ex parte* submissions made by the State in aggravation of sentence.

Mr Burgers, who appeared for the appellant submitted that the learned magistrate had misdirected herself by taking unsubstantiated submissions by the State into account as aggravating circumstances and by not having sufficient regard to the appellant as an individual. In his argument Mr Burgers, if I understood him correctly, pointed out that the learned the magistrate had misdirected herself by elevating these submissions to findings of fact, though she was perfectly entitled to have regard to those, but then not as facts.

It is clear to my mind that the appellant's legal representative, in her submissions, had already drawn the learned magistrate's attention to the fact that the appellant had harboured a resentment towards the complainant and that this arose from "various issues arising out of this separation", and that there was an interdict granted against him. It is indeed

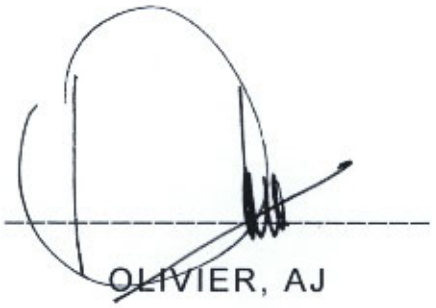
contemptuous of the interdict and aggravating that the appellant had burnt the house down.

The common cause and objective facts otherwise taken into account by the learned magistrate, were properly taken into account and considered by her. It does not appear to me that, even if these allegations had not been substantiated, that they carried weight with the magistrate. Even if they did, and even if she had misdirected herself by taking them into account, I would consider, having regard to the objective facts and as submitted by the appellant's legal representative at the hearing, and leaving aside all the submissions made by the State, that an appropriate sentence under the circumstances would indeed have been a sentence of five years imprisonment.

The learned magistrate was quite correct, in my view, in holding that the community regarded any such conduct against women and children in a serious light and having regard to the appellant's plea-explanation, it is clear that he had time to consider his actions whilst he was waiting for the complainant. The act of arson was a considered and deliberate act. It was not provoked by anything the complainant did or threatened to do.

IN THE CIRCUMSTANCES I WOULD DISMISS THE APPEAL

AND CONFIRM THE SENTENCE.



OLIVIER, AJ

GOLIATH, J: I agree and it is so ordered. The appeal against sentence is dismissed. The sentence of five years imprisonment is confirmed.

GOLIATH, J