

9/214/64

-19- SOLIFB

forced to give up his work - who is now forced to go out and look for a job - when he is subject to all sorts of restrictions such as are contained in these notices - he can't go on various types of premises - when he can't do certain types of work he is really a carpenter by trade - one can understand the opportunities for work for him are very limited particularly being a carpenter where it becomes almost essential for him to go on to premises which might constitute the premises of a factory where the opportunities for him in private self-employment are very limited - one can understand that this makes it most difficult for him to find work and therefore I would submit that one can't and one shouldn't judge too harshly his conduct in this case in trying to carry on with his job perhaps in quite mistakenly - but nevertheless in my submission, bona fide believing that he would be able to carry on with his work at least for a while and earn that little bit extra.

It is true there is evidence in regard to the circumstances in which he was arrested which suggest that he may have been hiding from the sergeant - well, assuming this is so, one can still understand that if this man realised when he heard the police were looking for him and he heard that a policeman had come to see him if he realised that he was committing an offence then, he .. his natural reaction in those circumstances might well be to hide away. But, again, this isn't something which/ . . .

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-20- HOLIFF

which should really be held against him in the circumstances. I submit that in the circumstances of this case, having regard to the fact that he is a man of 63 with a family that he is a first offender that this certainly will be a lesson to him and that he fully understands now - he didn't then - the full implication of this banning notice - and having regard also to the very difficult circumstances which he is now in insofar as future employment is concerned, that he should be given the opportunity at least of going out now and looking for and if possible finding employment which is open to him having regard to his notices, and bearing in mind that it has now been impressed upon him most forcibly that he must be very careful about where he goes and what he does in view of these notices. And I would submit that an appropriate sentence in the circumstances would be a suspended sentence because it would be a lesson to him for the future - it would be something hanging over his head and to that extent it constitutes a punishment for him - he has already been penalised in the sense that he lost his employment and has to find other employment, and I would submit that to send him to prison for any period of time would be unduly perhaps harsh in the circumstances of this case and it is open to Your Worship in this case to impose a suspended sentence unlike other types of offences under this section.

SENTENCE/ . . .

6/214/84

-21- KOLIFE

SENTENCE.

BY THE COURT:

The accused is a Santu male . He is aged 63. He is a married man and has got 7 children - with three still at school, to support, and he has been working at this factory for about 3 years.

He is a carpenter by trade.

He used to work for his own account but as that was not lucrative enough he took up employment with this factory where he earned R9.75 cents per week. Since the day of his arrest on the 13th of January 1964 he has been unemployed and without any income.

Now in sentencing a person the court must direct its mind to certain factors: the age and character of the accused person - the accused has a clear record - he has never been before court - he has got no record.

But he is a person of 63 years of age - a ripe age and he should therefore act as an adult and as a reasonable man a pater familias. He has got a family to care for.

The court must also have regard to the nature and the type of offence - whether this type of offence is regarded as serious in the eyes of the law - and it then becomes necessary to treat the accused with the severity he therefore deserves - and in this particular case the steps taken and the banning order or prohibition order served on the accused was done in the interests of the safety of the State.

Hct/ . . .

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SENTENCE

Not only the nature of the offence but also the circumstances - whether it is aggravated or not must be taken into consideration. And then of course the gravity which the legislature attaches to offences of this nature/^{is} indicated by the penalty clauses prescribed - the prevalence of the offence at the particular time - or in a particular community - and consequently the deterrent effect which must be arrived at by the sentence imposed - and the difficulty of detecting crimes of this nature.

Now it is a well-known fact that the police as the Security Branch, have special duties allotted to them and they have got to work all sorts of hours in order to prevent people from endangering the safety of the State.

This particular notice of prohibition or banning order was specially served on the accused on account of his activities, and the court is also satisfied that this order was served on the accused in an appropriate manner and it was explained fully to the accused with all its complications including the fact that the .. Sergeant Deyzel knew where the accused was working namely at a furniture factory and he was specially.. his attention was specially drawn to the fact that he ^{consequently} no longer ~~can~~ ~~work~~ at this factory, and that he should then notify the employer that he cannot go there.

Now despite that the accused did go back to his work and when Sgt. Deyzel made enquiries the accused instead of coming at the request of his employer Mr. First to the office, he went to hide himself away, and the..

Sgt./ . . .

Sgt Deysel had to go in search of him and he found him hiding behind a cupboard.

So it is quite clear although it is natural as Mr. Kuny said that he might now have thought he did something wrong and then tried to run away or hide away, but to the court's mind it is very very clear that he knew all along that he was not entitled to work at the factory any longer. Now it has been pressed here by Mr. Kuny that a suspended sentence is a suitable sentence in the circumstances... the court has already referred to the seriousness with which the legislation regards offences of this nature.

According to the section there - it is the second last, and it prescribes a penalty of not exceeding 3 years - so in a manner of seriousness it is the third on the list according to Section 11 and yet the legislature fixed a penalty of not exceeding three years. So that is the view that the legislature takes about offences of this nature.

If a person should be allowed to get away with just a suspended sentence, what is the good of an order of this nature? To serve a notice of that type on a person and he disobeys it? The court has pointed out that the accused is an adult person and as such he must always act as a reasonable man.

The court will not send him to gaol for a long period but at the same time there must be something hanging over his head in addition. The sentence will be

6/214/64

-24-

SENTENCE

18 MONTHS' IMPRISONMENT of which 12 months will be suspended for three years, on condition that the accused does not commit an offence of a similar nature.. a similar offence - that is when an order of banning is served on him he must obey it fully. The court will confine the condition just to that.

The suspension will be for a period of three years..

BY STATE PROSECUTOR:

On condition that he does not...commit a similar offence...--- Within the period of suspension.

BY MR. MUNI:

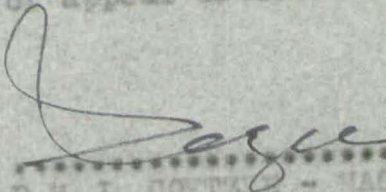
... at this stage to fix an amount of bail pending an appeal - obviously it won't be of effect until such time that the notice is filed - if the notice is filed .. but it will obviate the necessity of having to come back again...

BY COURT:

Was the accused out on bail?--- The accused was on bail I think £25 R50... I don't know what my learned friend's attitude towards this is...

BY COURT:

The bail will be fixed at the sum of R150 pending appeal provided the proper notice of appeal is filed in due course.


D.H.J. COETZEE - MAGISTRATE

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SAAK NO:

C 41/64

DATUM:

6.214/64

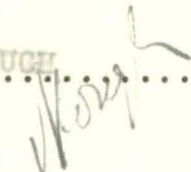
OORSKRYFSTER SE SERTIFIKAAT:

Ek die ondergetekende, sertifiseer hiermee dat die voorafgaande 'n ware oorskrif is van die oorspronklike getuienis maganies opgeneem in die saak van;

DIE STAAT TEEN:

JOHN BRIGGS MULLIS

V. HOUGH



OORSKRYFSTER:

CASE NO:

DATE:

TRANSCRIBER'S CERTIFICATE:

I, the undersigned, hereby certify that the foregoing is a true and correct trascript of the original evidence recorded by mechanical means in the case of;

THE STATE VERSUS:

.....
.....
.....

TRANSCRIBER.

I N D E X.

APPEAL NO: C.A. 95/64.

CASE NO: C.41/64.

JOHN MOLEFE

versus

THE STATE.

CHARGE SHEETS:

1(a),1(b),1(c),1(d),
1(e),1(f),1(g) & 1(h).

EVIDENCE:

Gabriel Johannes Deyssel

2 - 10

JUDGMENT:

11 - 13

John Molefe

14 - 17

SENTENCE:

21 - 24

TRANSCRIBER'S CERTIFICATE:

25

EXHIBITS:

"B" - Typed document.

26 - 29

REASONS FOR JUDGMENT:

30

NOTICE OF APPEAL:

31 - 32

1(a)

cont:

J. 174:

CHARGE SHEET: REGIONAL DIVISION.

No. C.41. 1964.
 Have finger-prints been taken? Yes.
 Police Station Marshall Square.
 R.C.A. No. 129/1/64.

IN THE COURT OF THE MAGISTRATE.

For the Division of SOUTH TRANSVAAL., held at JOHANNESBURG.
 Before D.H.J. CORTJER. Esquire,
 Magistrate for the said Division, on the 12th day of FEBRUARY, 1964.

THE STATE *verses*

insert following particulars after each accused's name:—
 Sex.
 Race (whether South African born or otherwise).
 Occupation.
 Approximate age

JOHN HOLBE.
BANTU MALE, 63 YEARS. S.A. BORN. GENERAL LABOURER.
Id. No. 3330/188.
ADDRESS: NO. 7619 ORLANDO WEST TOWNSHIP, JOHANNESBURG.
 (hereinafter called the accused),

charged with the offence of - AS PER ANNEXURE "A", -

in that, upon (or about) the _____ day of _____ 19____
 and _____ in the said Division,
 the said accused did wrongfully and unlawfully _____

The accused, being arraigned, pleaded GUILTY.

Judgment GUILTY.

Sentence 18 MONTHS IMPRISONMENT OF WHICH 12 MONTHS IS SUSPENDED FOR 3 YEARS ON CONDITION THAT ACCUSED DOES NOT COMMIT A SIMILAR OFFENCE WITHIN THE PERIOD OF SUSPENSION.

BAIL R150 PENDING APPEAL AND A PROPER NOTICE OF APPEAL TO BE FILED.

D.H.J. CORTJER.

Magistrate of Regional Division.

A.O.S. HARRIS.

FOR THE STATE: _____
 FOR DEFENCE: Mr. Hany Tel. 237361. Instructed by Mr. J. Joffe.
Mr. Fourie.
 INTERPRETER: _____

KLAGTESTAAT: STREEKAFDELING.

No.	_____	19
Is vingerafdrukke geneem?	_____	
Polisiekantoor	_____	
R.A.A. No.	_____	

IN DIE LANDDROSHOF.

Vir die Afdeling _____ gehou te _____
 Voor mnr. _____
 Landdros vir voormelde Afdeling, op die _____ dag van _____ 19 _____

Vul die volgende besonderhede in na die naam van elke beskuldigde:—
 Geslag,
 Ras (of in Suid-Afrika gebore). Beroop. Ouderdom (ongeveer.)

DIE STAAT teen

[hieronder die beskuldigde(s) genoem]

beskuldig van misdryf van _____

deurdag genoemde beskuldigde(s), op (of omtrent) die _____ dag van _____ 19 _____
 en _____ in voormelde Afdeling,
 wederregtelik en onwettiglik _____

Die beskuldigde het by verskyning voor die Hof _____
 _____ gepleit.

Uitspraak _____

Vonnis _____

Landdros van Streekafdeling.

VIR DIE STAAT: _____

VIR BESKULDIGDE: _____

TOLK: _____

ANNEXURE A.

IN THE MAGISTRATES COURT FOR THE REGIONAL DIVISION OF
SOUTH TRANSVAAL HELD AT JOHANNESBURG.

THE STATE

versus

JOHN MOLEFE.

THAT THE accused is guilty of the offence of having contravened Section 11(i), read with Section 11(ii) of Act No. 44 of 1950, as amended, further read with Section 10(1) (a) of the said Act;

WHEREAS the accused is a person whose name appears on a list in the custody of the officer referred to in Section eight of the said Act;

AND WHEREAS the Minister did upon (or about) the 26th day of November 1963, by notice under his hand prohibit the said accused in terms of the provisions of Annexure "B" attached hereto;

AND WHEREAS the said prohibition was addressed and delivered and/or tendered to the said accused at Meadowlands Police Station in the district of Johannesburg on the 17th day of December, 1963;

AND WHEREAS the said accused did upon or about the 13th day of January, 1964, and at Industria, Johannesburg, in the Regional Division of South Transvaal, wrongfully and unlawfully contravene or fail to comply with the said notice delivered or tendered to him, to wit by being within the premises of a factory as defined in the *Factories, Machinery and Building Work Act, 1941 (Act No. 22 of 1941)* to wit Anglo-Union Furniture Manufacturers (Pty) Ltd., ;

(c)

NOW THEREFORE the said accused is guilty of the
contravention as set out in the preamble to this charge.

1(D)

ANNEXURE "B".

TO: JOHN MOLEFE @ MOKGOL,
7619, ORLANDO TOWNSHIP,
JOHANNESBURG.

NOTICE IN TERMS OF PARAGRAPH (a) OF SUB-SECTION (1)
OF SECTION TEN OF THE SUPPRESSION OF COMMUNISM ACT,
1950 (ACT NO. 44 OF 1950).

WHEREAS your name appears on the list in the custody of the officer referred to in section eight of the Suppression of Communism Act, 1950 (Act No. 44 of 1950), I, BALTHAZAR JOHANNES VORSTER, Minister of Justice of the Republic of South Africa, hereby, in terms of paragraph (a) of sub-section (1) of section ten of the said Suppression of Communism Act, 1950, prohibit you for a period commencing on the date on which this notice is delivered or tendered to you and expiring on the 31st day of December, 1968, from -

- (a) absenting yourself from the magisterial district of Johannesburg;
- (b) being within -
 - (i) any location, native hostel or native village as defined in the Natives (Urban Areas) Consolidation Act, 1945 (Act No. 25 of 1945), except the Orlando Native Township;
 - (ii) any native compound;
 - (iii) the premises of any factory as defined in the Factories, Machinery and Building Work Act, 1941 (Act No. 22 of 1941);
 - (iv) any place which constitutes the premises on which any publication as defined in section one of the said Suppression of Communism Act, 1950, is prepared, compiled, printed/.....

1(E)

printed or published;

- (v) any place which constitutes the premises of any organisation contemplated in Government Notice No. R.2130 of the 28th December, 1962, and any place which constitutes premises on which the premises of any such organisation are situate;
 - (vi) any place or area which constitutes the premises on which any public or private university, university college, college, school or other educational institution is situate;
 - (vii) any area set apart under any law for the occupation of Coloured or Asiatic persons
 - (viii) the area of jurisdiction of the Alexandra Local Area Committee as defined in Administrator's Proclamation No. 27 of the 3rd February, 1958;
- (c) communicating in any manner whatsoever with any person whose name appears on any list in the custody of the officer referred to in section eight of the said Suppression of Communism Act, 1950, or in respect of whom any prohibition under the said Suppression of Communism Act, 1950, or the Riotous Assemblies Act, 1956 (Act No. 17 of 1956), is in force;
- (d) performing any of the following acts, that is to say -
- (i) preparing, compiling, printing, publishing or disseminating in any manner whatsoever any publication as defined in section one of the said Suppression of Communism Act, 1950;

- (ii) participating or assisting in any manner whatsoever in the preparation, compilation, printing, publication or dissemination of any publication as so defined;
- (iii) contributing, preparing or compiling in any manner whatsoever any matter for publication in any publication as so defined;
- (iv) assisting in any manner whatsoever in the preparation or compilation of any matter for publication in any publication as so defined;
- (v) giving any educational instruction in any manner or form to any person other than a person of whom you are a parent.

Given under my hand at Pretoria on this 26th day of November, 1963.

B.J. VORSTER.
Minister of Justice.

NOTES.

1. The Magistrate, Johannesburg, has in terms of Section 10(1)(a) of Act No. 44 of 1950 been empowered to authorise exceptions to the prohibitions contained in this notice.
2. Your attention is invited to Government Notice Nos. R.2130 and R.296 dated the 28th December, 1962, and the 22nd February, 1963, respectively.

Ek sertifiseer hiermee dat ek die duplikaat oorepronklike van hierdie beperkingsbevel persoonlik op JOHN MOLEFE @ MOKGOL om 2 nm. op 17/12/63 by die

Meadowlands/.....

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Meadowlands Polisiestasië Johannesburg, in die teenwoordigheid van Nr. 21279 Sers. F.S.W. Grobbelaar gestel het. Ek het die inhoud daarvan aan hom uitgelees en dit aan hom verduidelik.

(Get.) _____ Y
Nr. 28753 Sers.

Getuie:- (Get.) J.S.W. GROBBELAAR Nr.21279 Sers.

1(H)

CASE NO.

ANNEXURE C.

IN THE MAGISTRATES COURT FOR THE REGIONAL DIVISION OF
SOUTH TRANSVAAL HELD AT JOHANNESBURG.

IN THE MATTER BETWEEN

THE STATE

versus

JOHN MOLEFE.

NOTICE TO PRODUCE ORIGINAL DOCUMENTS.

TAKE NOTICE that you are hereby required to produce at your trial the original document served on you, a copy whereof is attached to the charge sheet and marked Annexure "B".

FURTHER TAKE NOTICE that should you fail so to produce, secondary evidence will be adduced by the State at your trial to prove the said document.

DATED AT JOHANNESBURG this 17th day of February, 1964.

A.O.S. MAREE.
REGIONAL COURT PROSECUTOR.

TO: JOHN MOLEFE,
No. 7619 Orlando West,
JOHANNESBURG.

On 29/1/64 the accused is before court.

Postponed: 17/2/1964 to Regional Court C.

Bail is extended.

H.S. BOSMAN.

ADD. MAGISTRATE.

29/1/64.

IN THE COURT OF THE MAGISTRATE FOR THE DIVISION OF
SOUTH TRANSVAAL, HELD AT JOHANNESBURG.

In the matter of :-

CASE NO: C 41/64.

JOHN MOLEFE

VS

THE STATE.

STATEMENT BY JUDICIAL OFFICER IN TERMS OF
RULE 63(3) OF ACT 32/1944.

The Honourable Appeal Court is, with due respect referred to my extempore judgment for reasons for sentence which appears on pages 21 - 24.

I have nothing to add except to ask that the condition of suspension be altered as follows:-

"That the accused does not commit any offence relating to the conditions of the banning order for a period of three years or for such period as the banning order remains operative whichever period is the lesser.

D.H.J. COSTZER.

MAGISTRATE REGIONAL COURT.

IN THE MAGISTRATES COURT FOR THE REGIONAL DIVISION OF
SOUTH TRANSVAAL HELD AT JOHANNESBURG

In the matter between:-

THE STATE

versus

JOHN MOLEFE

NOTICE OF APPEAL

BE PLEASED TO TAKE NOTICE that the abovementioned accused hereby notes an appeal to the Supreme Court of South Africa (Transvaal Provincial Division) against the sentence imposed upon him by the Regional Magistrate, Mr. Coetzee, sitting in the Regional Court at Johannesburg on the 17th FEBRUARY 1964.

The grounds of the appeal are as follows:-

1. The sentence was excessive and induces a sense of shock having regard to the circumstances of the case, and the personal circumstances of the accused; more particularly the fact that:-
 - (a) The accused is a man aged sixty-three years;
 - (b) The accused has a wife and three school-going children to support;
 - (c) The accused is a first offender;
 - (d) The accused by reason of the Banning Notice served upon him has been compelled to quit his employment and to seek other employment, but having regard to the fact that he is a carpenter by trade and is prohibited from entering onto factory premises, he has found and will in the future find it difficult to obtain other employment.

- (e)...../

- (e) Apart from entering upon the factory premises of his employer in order to do his normal work, the accused did no harm or mischief of any sort on the premises or amongst the other employees.
2. The Magistrate misdirected himself in considering that having regard to the maximum period of three years imprisonment laid down by the Act he ought to send the accused to gaol rather than suspend the whole of his sentence.
3. The Magistrate should have considered it a reasonable possibility in passing sentence that the accused may not fully have understood that the Notice served upon him prohibited him from going to the premises of the firm at which he had been employed for the past three years.

DATED AT JOHANNESBURG THIS 22ND DAY OF FEBRUARY 1964.

TO: THE APPEALS CLERK
MAGISTRATE'S COURT
JOHANNESBURG

JOEL JOFFE
Appellant's Attorney
2nd Floor Provident Assurance
House
Simonds Street
JOHANNESBURG

Case No C41/64

IN THE MAGISTRATES COURT FOR THE REGIONAL DIVISION OF
SOUTH TRANSVAAL HELD AT JOHANNESBURG

In the matter between:-

THE STATE

versus

JOHN MOLEFE

NOTICE OF APPEAL

BE PLEASED TO TAKE NOTICE that the above-mentioned accused hereby notes an appeal to the Supreme Court of South Africa (Transvaal Provincial Division) against the sentence imposed upon him by the Regional Magistrate, Mr. Coetzee, sitting in the Regional Court at Johannesburg on the 17th FEBRUARY 1964.

The grounds of the appeal are as follows:-

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 - (a) The accused is a man aged sixty-three years;
 - (b) The accused has a wife and three school-going children to support;
 - (c) The accused is a first offender;
 - (d) The accused by reason of the Banning Notice served upon him has been compelled to quit his employment and to seek other employment, but having regard to the fact that he is a carpenter by trade and is prohibited from entering onto factory premises, he has found, and will in the future find it difficult to obtain other employment

(e) Apart from entering upon the factory premises of his employer in order to do his normal work, the accused did no harm or mischief of any sort on the premises or amongst the other employees.

2. The Magistrate misdirected himself in considering that having regard to the maximum period of three years imprisonment laid down by the Act he ought to send the accused to gaol rather than suspend the whole of the sentence.

3. The Magistrate should have considered it a reasonable possibility in passing sentence that the accused may not fully have understood that the Notice served upon him prohibited him from going to the premises of the firm at which he had been employed for the past three years.

DATED AT JOHANNESBURG THIS 22nd DAY OF FEBRUARY 1964.

TO: THE APPEALS CLERK
MAGISTRATE'S COURT
JOHANNESBURG

-----(~~SGD~~) J. G. JOFFE-----

JOEL JOFFE
Appellant's Attorney
2nd floor Provident Assurance House
Simmonds Street
JOHANNESBURG.



Collection Number: AD1901

**SOUTH AFRICAN INSTITUTE OF RACE RELATIONS, Security trials Court
Records 1958-1978**

PUBLISHER:

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