



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Raymond Daniel de Villiers v The State (996/2021) [2023] ZASCA 83 (31 May 2023)

Today the SCA handed down judgment dismissing the appeal against the decision of the Full Court Free State Division of the High Court of South Africa, Bloemfontein (the full court).

The factual background is briefly that the appellant, an accountant received an amount of R950 000.00 on 25 May 2005, from a long-standing client, the complainant, to invest on her behalf. The appellant failed to invest the money as instructed and instead used it for his speculative business ventures. He paid only R50 000.00 to the complainant on demand and the latter laid a charge of theft against him. The appellant was arraigned before the regional court on a charge for fraud, and in the alternative, theft of R900 000. On 11 August 2011 the appellant pleaded guilty to the alternative charge of theft in terms of s 112 of the Criminal Procedure Act (CPA) and was convicted accordingly. Testifying during the sentencing proceedings following the appellant's conviction, the complainant expressed a desire to be paid back the amount that had been stolen from her. On 29 November 2011, the regional court imposed a sentence of seven years' imprisonment, of which three years were suspended for three years. On 9 November 2020 (nine years since his conviction and sentence in the regional court) the full court heard the appeal against the sentence and on 8 February 2021 it delivered judgment wherein the appeal was dismissed, and the custodial sentence imposed by the regional court confirmed. The full court stated in paras 3 and 4 of its order, that the appellant is ordered to pay to the complainant, the amount of R900 000 within thirty (30) days of that order.

The appellant, aggrieved by the judgment and order of the full court, approached this Court on petition, seeking special leave to appeal against the order of the full court which was granted but limited to only para 3 and 4 of the full court judgment.

The SCA found that: First, on a proper construction of s 300(1) of the CPA, only the court that convicted a person, referred to as 'the court in question' may award compensation under the provisions of s 300 of the CPA. In this case it was the regional court. The full court, as a court of appeal, was not the court that convicted the appellant and thus lacked the authority or jurisdiction to award a compensation order under s 300 of the CPA. Second, in terms of s 300 of the CPA, the compensation order is triggered 'upon the application of the injured person or of the prosecutor acting on the instruction of the injured person.' The full court did not have an application in terms of s 300 of the CPA made to it either by the complainant or by the prosecutor on her instruction, which was an essential pre-requisite for consideration of a compensation in terms of s 300 of the CPA. The full court therefore erred in considering and awarding a compensation, without an application before it. Third, s 300 of the CPA, envisaged an inquiry to be held to determine the award. All parties before the court must be provided an opportunity to participate in the proceedings. The full court gave notice to the parties after the hearing of the appeal that it is considering increasing the sentence and invited submission of further heads of argument. Of importance, the full court did not indicate to the parties that it had in mind to invoke s 300 of the CPA. As a consequence, the appellant submitted the heads of argument without specifically dealing with submissions on s 300 of the CPA. The appellant was thus prejudiced because he was not

granted a proper notice. Based on the above findings, the SCA concluded that the full court erred in awarding compensation in paras 3 and 4 of its order. Therefore, the full court's award of compensation in terms of s 300 of the CPA was set aside and the matter was remitted to the regional court for sentencing afresh.

In a separate judgment, Molemela JA supported the conclusion of the majority judgment on the basis of a different reasoning. She found that the sentence imposed by the regional court did not serve the interests of justice. She explained that by imposing a partially suspended sentence without making any compensation award envisaged in s 297(1)(a)(i)(aa) in circumstances where (1) the complainant's loss was almost R1 million rand, (2) the appellant had indicated a willingness to pay a lump sum of approximately R300 000.00 the next day, (3) the complainant had expressed a willingness to accept part-payment of the amount stolen as compensation, (4) the complainant had indicated that she had no other way of recouping her loss, the regional court had not exercised its sentencing discretion reasonably, thus warranting the setting aside of that sentence.

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