

IN THE HIGH COURT OF SWAZILAND

In the matter of: CASE NO. S.192/80

REX

vs.

COTILDE PERES

(also known as T. TV/ALA)

JUDGMENT ON SENTENCE

(Delivered on 1st April, 1981)

NATHAN, C.J.

The accused was charged on five counts of theft by false pretences, alternatively forgery and uttering, and one count of theft, in connection with certain cheques. The accused had been working for a firm Swaziland Builders (Pty) Ltd. After she left that employment she paid three visits to the firm on various pretexts; and on one of these she possessed herself of some 24 blank cheques out of the firm's checkbook. Four of these she filled out for large sums of cash over the period 28th March, 1980 to 30th May, 1980, forging the signature of Mr. de Souza, the Managing Director of the company; and these she cashed. Particulars are as follows:-

28th March, 1980	E 780	(Count 1)
22nd April, 1980	E2856.35	(Count 2)
16th May, 1980	E1786.00	(Count 3)
24th May, 1980	E1320.40	(Count 4)
30th May, 1980	E1875.00	(Count 5)
	E8617.75	

Count 6, which it was a work of supererogation to insert, is in respect of the theft of the 5 blank cheques themselves, which are said to be valued at 4 cents each.

2

The accused initially pleaded not Guilty, but after some evidence had been led, she changed her plea to Guilty on all counts, and she was duly found guilty. Although the matter is not of any great importance I think it is best to regard her as being guilty of the alternatives to the first five counts, namely forgery and uttering, and not of the main counts of theft by false pretences.

Mr. Pupuma who appeared for the accused, stated that the accused is a young woman of 23 with two illegitimate children whom she is supporting. The younger child is 2 1/2 months old. He said she committed these frauds or thefts because she had lost her employment and had no money with which to support the children. One may ask in this connection why it was necessary to steal the large sum of E8617.

Mr. Pupuma pleaded for a suspended sentence and said that the accused hopes to obtain a position in the Government Service at the post Office, Manzini. I think there is some force in Mr. Afful's comment that

if this were to happen the Government would be well advised to build two extra strongrooms at the Post Office.

Mr. Pupuma also said that the accused has a stepfather at Bhunya who will be willing to make repayment in instalments. No idea of the amount of the instalments has been given, and the stepfather has not been called to say whether he is in fact prepared to make payment. Prima facie E8617 seems a considerable sum to expect him to pay, unless indeed, the accused still has a large portion of this sum. No information in regard to this has been vouchsafed.

Mr. Pupuma further submitted that this was a case of sudden temptation. I do not agree. This was a calculated fraud by an ex-employee who paid three visits to her former

3

former place of employment although she had been told not to do this, and who spaced her frauds over a period of months.

I think I have indicated that I take a serious view of this case. In regard to giving a suspended sentence, there are two approaches. The one is exemplified "by my own judgment in R. v. Strydom, 1977-8 SLR 186; the other "by the recent judgement of the Court of Appeal in Neil Morrison v. R., not yet reported, Grim. App. No. 11/1980, 25th July 1980.

In Strydom's case the accused, who was the manager's assistant in a bank, stole E3408 over a period of nearly two years. He was aged 30, married with two children.. With some hesitation I imposed a fine of E1000 or 18 months imprisonment, the fine to be payable in instalments, plus 18 months imprisonment suspended for 3 years on condition, inter alia, that he repaid the E3408 in monthly instalments of E100. It is important to note that the accused had "been promised employment at another bank at a salary of E3800 per month. He was, like the present accused, a first offender.

I followed Strydom's case in R. v. A. Dlamini High Court case No. S.70/80. Dlamini was a teller in a bank who stole E5000. I sentenced him to a fine of E500 or 1 year's imprisonment, plus a suspended sentence of two years imprisonment. There were special circumstances in the case which caused the bank to be in no worse position financially than it was before the theft. This was an isolated act of theft.

Reference may also be made to S. v. Benetti, 1975(5) SA 603(T) this was the case of a woman who stole from her employer R10200 over a period of 11 months. She had two previous convictions for theft. She had two young children. She had gained new employment and was prepared to repay at

4

at the rate of R120 per month; and the court was of the view that out of the earning of her and her husband she would probably be able to repay more than the R120 per month. The Transvaal Court altered the magistrate's sentence of 3 years imprisonment to 3 years, suspended on condition that she repaid at least R200 per month and submitted to the supervision of a probation officer. The Court was moved to this conclusion by the consideration of keeping the accused's family intact and preserving her productivity. I pointed out in Strydom's case, supra, that it might be thought that the court in Benetti's case acted with extreme leniency.

Turning to the other line of case, in Morrison, the accused was found guilty of having stolen from his employer E1850 (he was charged with the theft of E3005) over a period of who stole same months. He was a bachelor/the money to pay for the accommodation of his parents who were visiting him here from the United Kingdom. My brother Cohen J sentenced the accused to 2 years imprisonment, of which one year was suspended. This was confirmed by the Court of Appeal, although Van Winsen J.A. said that had he been the Judge of first instance he might have been inclined to favour the Strydom approach.

In my recent Judgment in R. v. Themba Ndaba, case S.153/79, 18th March, 1981 I reviewed a number of

sentences in theft cases. I would again mention S. v. Edward Bhembe, case 53/1976, where the accused was sentenced to imprisonment for 5 years for stealing E3000 from a building society.

Each case must of course depend upon its own circumstances. I have, as I did in Hdaba's case supra, had regard to the triad consisting of the crime, the offender and the interests of society (see R. v. Zinn, 1969(2) SA 537 A.D.). In regard

5

to the crime, the theft in the present instance was a planned and mean one extending over a period, of a large sum of money far in excess of what the accused could possibly have wanted for the support of her small children. There has been no attempt to restore the missing cheques which may already have been used by the accused or which she may intend to use in the future. In regard to the accused, there is little to be said in her favour. So far as her children are concerned, if her stepfather is prepared to make restitution he can also look after and support her children. So far as society is concerned it is surely not in the interests of society that the idea should get abroad that a case of this nature, even where a woman is concerned, should not be severely dealt with.

The lay public and the accused probably do not realise that in a case such as the present the main pecuniary loss is sustained by the Bank which has to reimburse its customer for unauthorised drawings on his account. But the customer sustains expense and inconvenience as well. A business such as the complainant, which runs on over-draft, can ill afford this; and even banks are not fair game for predators such as the accused. It is not in the interests of society that conduct such as the accused was guilty of should attract only a lenient sentence.

In my opinion a prison sentence is called for. In regard to suspension of a portion of it, I am prepared to condition that grant this subject to the/a repayment is made. If there is any truth in the stepfather story this can be effected by him. Alternatively it can be made out of those proceeds which I must assume are still in the hands of the accused. I have been told nothing to the contrary.

6

I consider that this is, notwithstanding that the forgery and uttering took place on different dates, a proper case for the imposition of a composite sentence.

The sentence will be: 3 years imprisonment, of which one year will be suspended for 3 years on condition:

- a) that repayment of E2000 is made to the Standard Bank of Swaziland Ltd. before the expiration of the operative sentence of two years imprisonment, subject to any remission of sentence earned by the accused;
- b) that the accused is not convicted of any offence of which theft or fraud is an element, committed during the period of suspension. This sentence is without prejudice to the rights of the Bank to take such steps to obtain repayment from the accused as it may be advised.

C. J. M. NATHAN

CHIEF JUSTICE