

CIV. CASE NO. 126/2000

In the matter between

REX

And

NTISA VINCENT CEASAR & 24 OTHERS

Coram
For the Crown
For the Accused

S.B. MAPHALALA – J
MR. N. MASEKO
MR. S. MDLADLA
MR. J. MASEKO

REASONS ON SENTENCE
(03/05/2001)

The accused persons pleaded guilty to both counts of fraud and on their pleas they were found guilty.

Attorneys representing the accused persons then addressed the court in mitigation from the bar. A number of factors were advanced in mitigation of sentence. It was further submitted that the court in arriving at a sentence is to look at their individual participation in the commission of the offence.

Firstly, it was submitted that all the accused pleaded guilty to the offences without wasting the court's time and this showed that they were remorseful for what they have done. It was submitted in this regard that the accused persons were used as conduit pipes to perpetrate this offences by some syndicate which operates in South Africa. That the accused persons are not the instigators of this scheme to defraud the banks but were used as mere cogs in the whole scheme.

Secondly, it was submitted that all the accused persons are first offenders and thus should be treated as such for purposes of sentence.

Thirdly, most of the accused persons are providers to their families with school-going children.

Fourthly, some of the accused persons are sickly and the court was urged to attach some weight on this aspect.

Lastly, the court was urged to impose a suspended sentence or a sentence with an option of a fine.

These are the factors I was invited by the defence to consider. Before doing that I wish to state that at this stage of the proceedings the court ought to balance three competing interests which have in legal parlance been called the triad viz, the interest of the accused persons; the interest of society and the nature of the offence (*S v Zinn 1969 (2) S.A. 537 (A)*).

On the first leg of the *triad* the consideration is that the accused persons are first offenders weighs heavily in their favour and prompts me if it is possible to avoid sending them to prison to any length of time. All the accused persons have already served a period of (9) nine months in custody awaiting trial in this case and this to some degree serves as punishment.

I have also considered the ages of the accused persons in coming to an appropriate sentence and that they all pleaded guilty to the charges appear to me contrite.

On the second leg of the *triad*, viz, the interest of society. Here surely, the interest of bank, which was defrauded of a large sum of money, should be carefully considered. The bank to its detriment did not recover the bulk of money. The court ought to come in here and protect banking institutions from such clandestine schemes.

On the third leg of the *triad*, viz the nature of the offence. I was told that the accused persons were recruited from Soweto by the masterminds of a syndicate which operate from Johannesburg. The accused cashed cheques ranging from E4, 000-00 to E15, 000-00 which totalled to E223, 000-00. It is quite clear that the commission of this offence involved sophisticated planning by some group of criminals other than the accused persons. The accused persons were used to further the grand schemes of others for minimal rewards. The accused persons entered this devious scheme with their eyes open and surely should accept what is coming to them.

I have considered a sentence with an option of a fine in view of what I have already stated that the accused persons have already been in custody for (9) nine months, which is punishment in itself.

The sentence, which I impose, is as follows:

1. Each accused person is sentenced to a fine of E5, 000-00 in default of payment of which each will be imprisoned for 2 years. (Both counts treated as one for purposes of sentence).
2. Each will be sentenced to imprisonment for a period of 5 years suspended for a period of 3 years on condition that the accused persons are not hereafter found guilty of an offence of which theft is an element committed during the period of suspension.

S.B. MAPHALALA
JUDGE