JEAN v SINON

(2012) SLR 64

Karen Domingue for the appellant
Respondent in person

Judgment delivered on 30 March 2012 by

EGONDA-NTENDE CJ:

Micheline Sinon complained to the Family Tribunal against the conduct of the appellant who is in the position of a spouse [*de facto husband*] to her. The Family Tribunal on 1 April 2011 issued a protection order against the appellant. It restrained the appellant from physical and psychological violence against the respondent and any other member of the respondent's household. It restrained the appellant from approaching the respondent within a distance of 25 metres. It restrained the appellant from being on the premises including the house of the respondent at Takamaka. The appellant was ordered to remove all his personal belongings with the assistance of the police by 5 pm of 1 April 2011. Contrary to this order on 17 April 2011 the appellant was in the household of the applicant. He used keys to let himself in.

A complaint was raised to the Family Tribunal and it sentenced him to one month imprisonment suspended for 6 months and it was to review the matter on 18 May 2011. This order was subsequently vacated on 20 April 2011 with no reasons assigned for the vacation. On 18 April 2011 the parties were before the Family Tribunal. The applicant notified the Tribunal that the respondent had threatened her in the presence of a police officer. The appellant admitted that he was less than 25 metres from the respondent when he spoke to her. The Family Tribunal ordered a sentence of one month to be served by the appellant for breach of the 1 April 2011 order. On 18 May 2011 the appellant was released from prison from serving that sentence.

On 22 May 2011 at 5.30 pm the appellant again entered the respondent's home armed with a wooden machete, grabbed her hand and dragged her outside her house into the bushes. Relatives of the respondent called the police who arrived on the scene and the appellant fled. At around 7.30 pm the same evening the appellant returned to the home and removed the roof of the house and physically assaulted the respondent. She managed to flee the house to seek police assistance.

The respondent admitted to being at the applicant's house, claiming that he was there to remove his personal belongings which he states the applicant had destroyed. The Family Tribunal decided to sentence him to one and a half years imprisonment for breach of the Family Tribunal order of 1 April 2011. Right of appeal was explained and he was committed to prison. The appellant appeals against that order and set forth four

grounds of appeal. At the hearing of the appeal Ms Domingue, counsel for the appellant, argued only two grounds abandoning the last two grounds.

Firstly, she argued that the Family Tribunal erred in convicting the appellant without having heard any evidence in the matter. She submitted that when the records are perused there is no record that indicates that any evidence was taken on oath and as a result there is no evidence to sustain a conviction in this matter.

Secondly, she submitted that the sentence of the Family Tribunal was manifestly harsh and excessive and unwarranted in all the circumstances of this case. She submitted that ordinarily a court of law would not impose the maximum sentence but in this instance the sentence was close to the maximum sentence of 24 months.

I have perused the record of the Family Tribunal. It is to say the least very brief but what is clear is that when the parties appeared before the Family Tribunal on 27 May 2011 the Family Tribunal listened to both the applicant and respondent and notes were made of the statements of each person. The statement of the respondent is not on oath. Neither does the statement of the appellant indicate that any oath was taken. However, it is clear that the appellant admitted that he was at the respondent's premises on the day in question which was clearly in violation of the 1 April 2011 protection order. He had been restrained from being on the premises of the house of the respondent at Takamaka. He had been restrained from approaching the respondent within a distance of 25 metres.

In my view it was open to the Tribunal to find that the appellant had admitted sufficient facts to disclose that he had contravened the protection order and as a result to have committed an offence under section 6 of the Family Violence (Protection of Victims) Act, Act 4 of 2000. In the result it was unnecessary to have recorded evidence on oath given the fact that the appellant had admitted facts sufficient to found a conviction under this provision. I would dismiss ground no 1 of the appeal.

The second ground was that the sentence in question was manifestly harsh and excessive. The appellant was sentenced to 18 months imprisonment. The maximum imprisonment is three years or a fine and such imprisonment. The appellant had a history of violating this order repeatedly. I am satisfied that in the circumstances of this case this sentence could not have been excessive. I must emphasise that the purpose of this legislation is to protect victims from violence from members of their family. It is clear that short sharp sentences had failed to work with the appellant. I am satisfied that the Tribunal did not err in any way in setting the sentence of imprisonment at 18 months. I would reject ground no 2 of appeal.

In the result this appeal fails and the conviction and sentence of the Family Tribunal is affirmed.