IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE:~~YES~~/**NO**
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/**NO**
(3) REVISED

DATE: **5 SEPTEMBER 2023**

SIGNATURE:.....

CASE NO: A11/2022

IN THE MATTER BETWEEN:

MARLENE VAN DER WESTHUIZEN **APPELLANT**

AND

THE STATE **RESPONDENT**

Coram: Barit AJ *et* Millar J

Heard on: 24 May 2023

Delivered: 5 September 2023 - This judgment was handed down electronically by circulation to the parties' representatives by

email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 10H00 on 5 September 2023.

ORDER

On appeal from: The Magistrates Court for the District of Tshwane Central.

It is Ordered:

[1] The appeal is upheld.

[2] The judgment of the Magistrate's Court is set aside and replaced with:

"The accused is acquitted on all charges."

JUDGEMENT

BARIT AJ (MILLAR J CONCURRING)

INTRODUCTION

[1] The Appellant, Mrs Marlene Van Der Westhuizen, was charged in the Magistrates Court, for the District of Tshwane Central, City of Pretoria with three counts. These were:

[1.1] Count 1 - Trespassing. Contravening the provisions of (1)(a) or (b) read with Sections 1(1A), 1(2) and 2 of the Trespass Act 6 of 1959.

[1.2] Count 2 - Reckless/Negligent driving. In terms of National Road Traffic Act 93 of 1996.

[1.3] Count 3 - Assault with the intent of grievous bodily harm, by driving over the foot of Kgabo Nkwane with the Landrover.

[2] The Appellant represented herself during the trial.

[3] The charges were put to the Appellant who pleaded not guilty to all three charges.

[4] The Appellant was convicted on 19 November 2020 on counts 1 and 3. With respect to count 2, the appellant was found not guilty and acquitted.

[5] On 19 November 2020 the Magistrate, after the Prosecutor informed the Court that the *"accused has no previous criminal offences"*, sentenced the Appellant as follows:

[5.1] To undergo twelve months imprisonment which is wholly suspended for a period of 5 years on condition that the Appellant is not convicted of assault with intent to do grievous bodily harm or assault common, committed during the period of suspension.

[5.2] In terms of Section 103 of Act 60 of 2002, the Appellant is declared unfit to possess a firearm.

[6] This appeal revolves around two aspects:

[6.1] Firstly: An application for condonation for the late filing of the heads of argument of the appellant.

[6.2] Secondly: The actual trial itself where the Appellant was found guilty of trespassing and assault.

BACKGROUND

[7] Briefly, the incident leading to the trial at the magistrate's court was as follows:

[7.1] The Appellant arrived on 30 June 2019, at the Centurion Golf Estate to see her ex-husband. She did not have an access code but appears to have been let in by a guard, having allowed her Range Rover in.

[7.2] Once within the actual gate, the Appellant proceeded to her ex-husband's premises. However she was not able to gain any response and the premises was locked.

[7.3] An altercation then took place between the Appellant and an armed guard. From the evidence in the trial court, a gun was produced, and a shot was fired. (This was part of the Magistrate's judgment).

[7.4] A claim was made that the driver of the vehicle (the Appellant) drove the vehicle over the foot of the guard, Gaba Nkwena. The appellant then drove out of the estate.

[8] The result of the above are the three charges against the Appellant, which were trespassing, assault and reckless driving.

[9] On 19 November 2021, the Appellant was granted leave to appeal against the convictions and the sentence.

[10] The Application for Leave to Appeal was lodged on 20 December 2021, with respect to the judgement of the trial court, in that:

[10.1] The Applicant was not given a fair trial;

[10.2] The trial Magistrate misdirected herself in finding that the State proved the guilt of the Appellant beyond reasonable doubt with respect to assault and trespassing;

[10.3] The Applicant being declared for no reason, unfit to possess a firearm.

CONDONATION

[11] The Appellant is asking the Court for condonation for the late filing of her heads of argument.

[12] In the matter of *Grootboom v National Prosecuting Authority and Another* [1] it was stated:

> *"It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or court's direction. Of great significance, the explanation must be reasonable enough to excuse the default".*

[13] In the matter of *Melane v Santam Insurance Co. Ltd* [2] the following was said:

> *"In deciding whether sufficient cause has been shown, the basic principle is that the Court has a discretion, to be exercised judicially upon consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefor, the prospects of success, and the importance of the case. Ordinarily these facts are inter-related: they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion, so of course that there are no prospects of success and no point in granting condonation. Any*

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1 [2014] BLLR 1 (CC) at para [22].
2 (1962) SA 531 (A) at 532 C-F.

attempt to formulate a rule of thumb would only serve to harden the arteries of what should be a flexible discretion. What is needed is an objective conspectus of all the facts. Thus, a slight delay and a good explanation may help to compensate for prospects of success which are not strong. Or the importance of the issue and strong prospects of success may tend to compensate a long delay".

[14] Rule 27 of the Uniform Rules of Court gives a discretion to the court to condone non-compliance with the rules where good cause has been shown and the other party would suffer no prejudice.

[15] Whether it is in the interests of justice to grant condonation depends upon the facts and the circumstances of each case. Factors that are relevant to this enquiry include but are not limited to, the nature of the relief sought, the extent in court of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issue to be raised in the intended appeal and prospects of success. [3]

[16] The following are some of the aspects:

[16.1] The extent and cause of the delay.

[16.2] The nature of the relief sought.

[16.3] The reasonableness of the explanation for the delay.

[16.4] The effect of delay on the administration of justice and other litigants.

[16.5] The prospects of success.

[16.6] The importance of the issue to be raised.

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[3] *Van Wyk v Unitas Hospital (Democratic Dry Centre as Amicus Curiae* (2008) (2) SA 472 (CC) at 477A-B.

[17] That the prospects of success, play a role with respect to whether condonation should be granted or not, can be seen from the judgement of *Minister of Agriculture and Land Affairs v C.J. Rance (Pty) Ltd.*[4] Here, the court said:

> *"The prospects of success of the intended claim play a secondary role – "strong merits may mitigate fault; no merits may render litigation pointless. The court must be placed in a position to make an assessment on the merits in order to balance that factor with the cause of delay as explained by the applicant. A paucity of detail on the merits will exacerbate matters. An applicant thus acts on his own peril when a court is left in the dark on the merits of the intended action…."*

[18] After due consideration and studying the case as a whole, the interests of justice weigh heavily in favour of allowing for the application for condonation to succeed. This is also the fact especially when looking at the "chances of success" of the main application. Further, this is supported by the respondent not opposing the application for condonation. Hence my decision to allow the application for condonation.

THE APPEAL

[19] The crux of the question in this appeal, comes down to two main factors:

[19.1] Firstly, was the Appellant given a fair hearing?

[19.2] Secondly, was the Appellant found guilty beyond a reasonable doubt on both the charges on which she was convicted and sentenced? In essence, was the Appellant guilty beyond a reasonable doubt of trespassing? Further, was the Appellant guilty beyond reasonable doubt of assault?

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4 2010 (4) SA 109 (SCA) at para 37.

[20] With respect to the guilty verdict of trespass and assault, the Applicant's contention is that she was not given a fair trial. Further, the question of guilt beyond reasonable doubt must be looked at.

FAIR TRIAL

[21] The Appellant contends that the court process was not fair. Simply stated, the appellant believes that she did not have a "fair trial". Section 35(3)(G) after the Constitution of the Republic of South Africa states[5] :

> *"Every accused person has a right to a fair trial, which includes the right to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial justice would otherwise result, and to be informed of this right promptly".*

[22] In the case of *S v Ndlovu* [6] the Court stated:

> *"…where an accused wishes to obtain legal representation at State expense but his application to the Legal Aid Board has apparently been unsuccessful, it will be essential that the Presiding Officer should pursue the question whether "substantial injustice" results if the accused were not provided with legal representation at his trial at State expense".*

[23] In *S v Sibiya* [7] the Court stated that there is*:*

> *"…a general duty on the part of Judicial Officers to ensure that un-represented accused fully understand their rights and the recognition that in the absence of such understanding a fair and just trial may not take place".*

[24] In *S v Buxela* [8] the following was stated*:*

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5 The Constitution of the Republic of South Africa, 1996. Act 108 of 1996.
6 2005 (2) SACR 645 (W).
7 2004 (2) SACR 82 (W) at 88 D.
8 (R 82/2021) (ZAFSAC 255) at para 5.

> *"It is trite that the accused has a right to have a fair trial which includes the right to legal representation at State expense if he cannot afford his own and to be informed of this right promptly"*

[25] In *S v Kester* [9] the court held that the duty of the Judicial Officer is to *"… diligently, deliberately and painstakingly"* explain the rights of an un-represented accused and to ensure and confirm that it was understood.

[26] The Constitutional Court held in *S v Zuma,*[10] that the presumption of innocence is not new to our legal system. In that case the court was concerned with the constitutionality of Section 217(1)(b)(ii) of the Criminal Procedure Act 51 of 1977 which also contains the reverse onus provision. Interpreting Section 25(3)(c) of the Constitution, Kentridge AJ, found the Canadian cases to be of particular assistance since the Canadian Charter of Rights and Freedom is similarly structured to Chapter III of our Constitution. Section 11(d) of the Canadian Charter of Rights of Freedom provides that the accused person: "*to be presumed innocent until proven guilty according to law in a fair and public hearing by independent and partial tribunal*". The operative words which are most relevant to this particular matter is the word "fair". Did the Appellant have a fair hearing?

[27] In respect of the appellant, the following is pertinent:

[27.1] The trial court did not help, the Appellant, in any way, to obtain legal representation.

[27.2] The Appellant was barely explained what was happening or informed of her rights.

[27.3] The Appellant was clearly out of her depth.

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[9] 1996 (1) SACR 461 at 472.

[10] Constitutional Court held in *S v Zuma* 1995 (2) SA 642 (CC) at para 33 *(*that the presumption of innocence is not new to our legal system).

[27.4] The Appellant is a lay-person, not trained and guided or experienced in matters of law.

[27.5] The court *a quo* failed to prevent the State from tendering inadmissible hearsay evidence.

[27.6] The Appellant was never assisted by the court *a quo* in presenting her defence. The appellant clearly did not understand certain aspects and was therefore not in a position to defend herself.

[27.7] A reading of the judgment of the court *a quo* itself indicates the difficulty that the Appellant (the Accused at that stage) had with respect to the proceedings.

[27.8] A pertinent example of the problems the appellant was having is illustrated where the Appellant confronted witness Makhoshe of what another witness will say. Here the appellant was stopped and it was not even explained to her why she was not able to ask the question.

[27.9] Although the above highlights a few areas where the Appellant was severely prejudiced, and the interests of justice not taken into account, the trial and its proceedings were vitiated by irregularity.

[28] The Appellant, from the above, did not enjoy a fair trial which clearly was her right. The court had the duty to assist and guide the Appellant who remained un-represented throughout her trial. It can be seen from the case law that it was the duty of the Magistrate to inform the Appellant of her right at all stages of the trial. This included her right to have legal representation and to be guided in that respect. Each step throughout the trial was not explained to the appellant, which was the duty of the Magistrate. Hence, in summation it can be stated that the Appellant did not enjoy a fair trial, which was her right.

THE LAW

[29] In the case of *S v van der Meyden:* [11]

> *"The onus of proof in a criminal case is discharged by the State if the evidence establishes the guilt of the accused beyond reasonable doubt. The corollary is that he is entitled to be acquitted if it is reasonably possible that he might be innocent (*see for example, *R v Difford, 1937 AD 370, 373 and 383).* These are not separate independent tests, but the expression of the same test when viewed from the opposite perspective in order to convict it, the evidence must establish the guilt of the accused beyond reasonable doubt which will be so only if there is at the same time no reasonable possibility that an innocent explanation which has been put forward might be true. The two are inseparable, *each being the logical corollary of the other… in whatever the form the test is expressed, it must be satisfied upon a consideration of all the evidence. A court does not look at the evidence in implicating the accused in isolation in order to determine whether there is proof beyond reasonable doubt and so too, it does not look at the exculpatory evidence in isolation in order to determine whether it is reasonably possible that it might be true".*

[30] The trial court must consider the evidence implicating the accused as well as evidence exculpating an accused. Such is then evaluated in its totality and the trial court will then weigh up the evidence before it, to establish whether there is proof beyond a reasonable doubt. PJ Schwikkard in her book "Presumption of Innocence" [12] states:

> *"It was described by Davies AJA in R v Ndhlovu [13] in the following terms:*
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> *'In all criminal cases it is for the State to establish the guilt of the accused, not for the accused to establish his innocence. The onus is on the State to prove all averments necessary to establish the guilt of the accused, not for the accused to establish his innocence. Consequently, on a charge of murder it must be proved not only the killing, but that the killing was unlawful and*

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11 1999 (1) SACR 447 (WLD) at 448 F-H.

12 1999 Juta & Co Ltd, Cape Town, at p 20.

13 1945 AD 369 at p 386.

intentional. It can discharge the onus either by direct evidence or by proof of facts of which unnecessary inference may be drawn. One such fact, from which (together with all the other facts) such an inference may be drawn, is the lack of an acceptable explanation by the accused. Notwithstanding the actions of such an explanation, if on review of all the evidence, whether led by the State or by the accused, the court is in doubt whether the killing was unlawful or intentional, the accused is entitled to the benefit of the doubt'. "

[31] PJ Schwikkard goes on to quote yet again from Davis AJA, *R v M* [14] where he stated:

"The court does not have to believe the defences story, even less does it have to believe it in all its details, it is sufficient if it thinks there is a reasonable possibility that it may be substantially true".

[32] In *S v Molaza,*[15] Joubert A.J. stated:

"The proper test is that an accused is bound to be convicted if their evidence establishes his guilt beyond reasonable doubt, and the logical corollary is that he must be acquitted if it is reasonably possible that he might be innocent. The process of reasoning which is appropriate to the application of the test in any particular case will depend on the nature of the evidence that the court has before it. What must be borne in mind, however is that the conclusion which is reached (whether it be to evict or acquit) must account for all the evidence. Some of the evidence might be found to be false; some of it might be found to be unreliable; and some of it might to be found to be only false or unreliable, but none of it may be simply ignored".

[33] It was said in *S v V:* [16]

"It is permissible to look at all the probabilities of the case to determine whether the accused's version is reasonably and possibly true, but whether

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[14] 1946 AD 1023.

[15] (2020) 4 or SAALL 167 (GJ) 31 para 45.

[16] 2000 (1) SACR 453 (SCA) – See R v Difford 1937 AD 370 at 373 where Watermeyer AJA cited with approval the following: *"If he gives an explanation, even if the explanation is improbable, the Court is not entitled to convict unless it is satisfied, not only that the explanation is improbable, but that beyond any reasonable doubt it is false*".

> *one believes him is not the test, as pointed out in many judgments. The test is whether there is reasonable possibility that the accused evidence may be true".*

WITNESSES

[34] The State led evidence from three State witnesses, namely, Jeremiah Phala, Makhoshe Pfariso and Petrus Mkwane. These witnesses all worked at the Centurion Golf Estate for Bidvest Protea Company and were all on duty on the day of the incident.

[35] Witness Mkwane, was inside the gate when he walked over to the appellant who was in a silver Range Rover. He claims that when she drove away, she drove over his toes. He then called people at the gate informing them not to allow the Range Rover to leave the estate.

[36] In the Magistrate's summation of this witness's evidence, the Magistrate states the following (para 10 of the judgement of the trial court):

> *"When they arrived at the gate the accused took the residents name and drove close behind a white BMW of the residents that was open in the boom gate using her finger. When the boom gate opened, the resident passed, and the accused quickly followed. The securities ordered the residents to stop… The accused moved to the right lane and a gun shot was fired. The accused drove away".*

[37] With respect to witness Mkwane, his evidence was basically that he approached the "accused" (i.e. the appellant) at the time that she was within the grounds itself. He confirmed that Makhoshe chased the accused.

[38] Witness Phala was at the main gate controlling cars that were coming in and out of the estate. According to the judgment of the Magistrate, Phala was

"told by his Manager to close the main gate so the Accused does not leave the estate".

[39] In giving evidence the Appellant, was emphatic that her intention was to leave the premises. The magistrate in her judgment states that, from the evidence given by the Appellant *"she saw a gentleman reaching for his firearm and she drove away"*. In her evidence the Appellant denied that she drove to the exit road when entering the premises, and further also denied driving over the complainant's feet. Further, in her evidence the Appellant stated that the security guard had opened the gate to let her in, and she was driving on the visitors side.

[40] A point which is perplexing is that the magistrate herself states in her judgment:

> *"Trespassing involves being in someone else's property without the necessary intention".*

ASSAULT

[41] CR Snyman, *Criminal Law*,[17] (Snyman) states that *"assault"* consists in any unlawful and intentional act or omission which results in another person's bodily integrity being directly or indirectly impaired.

[42] Snyman[18] further says that assault with intent to do grievous bodily harm, is the same as assault but that there must be "intent to do grievous bodily harm" – (which) is the most serious.

[43] Can it be said that the Appellant is guilty beyond reasonable doubt of assault? The charge of the assault is built around the Appellant driving over the foot/toe of Nkwane.

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17 CR Snyman, Criminal Law Sixth Edition, 2008 Lexis Nexis Durban p455.

18 *Ibid.*

[43.1] The story of this alleged assault varied from “driving over the foot”, “driving over the toe” and in cross-examination the complainant stated “bumped the toe”.

[43.2] There is absolutely no consistency in the story.

[43.3] No medical certificate was presented to the court with respect to any injuries.

[43.4] Though video footage was available, same was never brought or used in court. This raises the question of why.

[43.5] Why the deviation from what the applicant is alleged to have driven over and/or bumped. By way of example, driving over the “foot”, could have involved serious injury. Nkwane over whose foot the car is meant to have been driven, apparently suffered no damage at all by the admission that such was attended to in the guard house. This in turn, raises more questions. What attention was needed? Where is the evidence of the person who attended to “Nkwane”?

[43.6] The appellant was driving a Land Rover vehicle, which is big and heavy. It is highly improbable that Nkwane did not sustain serious injuries if the appellant did in fact drive over his foot, toe/toes.

[44] The probabilities of the incident having occurred is remote. However, this must be compared to the Magistrate accepting in terms of the charge of assault that the Applicant drove over the foot of Nkwane. To cap this all, the respondent in its heads of argument, paragraph number 25, states:

> *“With regard to Count 3, assault with the intention to do grievous bodily harm, the only evidence of how this happened is the testimony of Nkwane that he was next to the driver’s door when she drove off and “bumped him on the toes”. It is respectfully submitted that there is not sufficient evidence to justify a finding that the Appellant had the necessary intent to do grievous bodily*

harm. It is unlikely the Appellant could have seen from her position in the vehicle where Ngwane's feet were when she drove off. As it is clear that the Appellant was unaware that she drove over Ngwane's toes".

[45] From this, one has to contrast this with what the Magistrate in her judgment stated with respect to what the Appellant, according to her, did. Namely to drive over the foot of Nkwane.

[46] It must be noted that the whole incident which eventually degenerated to a non-existent assault smacks of fabrication. There is absolutely nothing further that one could say other than that, the respondent has conceded that the magistrate should not have found the Appellant guilty with respect to the charge of assault.

TRESPASS

[47] Section 1 of the Trespass Act[19] says that any person who without permission:

[47.1] Of the lawful occupier of any land or any building being or part of a building; or

[47.2] Of the owner or person in charge of any land or any building or part of a building that is not lawfully occupied by any person, enters or is upon such land or enters or is in such building or part of the building, shall be guilty of an offence, unless he has lawful reason to enter or be upon such land or enter or be in such building or part of a building.

[48] Snyman [20] lists the elements of trespassing:

[48.1] The conduct, that is the entering or being upon;

[19] 6 of 1959.
[20] *Ibid p556-7.*

[48.2] The land or building or part of the building;

[48.3] The unlawfulness which includes the absence of consent as well as the absence of “lawful reason” as well as for the absence of “lawful reason” the intention.

[49] Snyman further continues:

> *“If the permission to be on the property is withdrawn, common sense dictates that X must be afforded a reasonable opportunity of vacating the property since he cannot be expected immediately “to disappear into thin air”. It is essential for the prosecution to allege or prove either the entry or the remaining (if applicable both)…. “*

[50] The Appellant testified, which was not contested, that there were no board or boards indicating that she would be trespassing if she entered. Hence, she would not have known that she was trespassing without such information being afforded to her. To make the story even more ludicrous in respect to being found guilty of trespassing, the evidence before the court, and that was not changed by the Appellant at any stage was that the gate was opened for her by a security guard. Hence, it was the very security guard system that allowed the appellant into the estate. The gate was opened by a security guard, who could in any event, even if a sign had been present, such would have by implication overruled any claim of trespassing.

[51] The Appellant had arrived to see Mr. Botes, her ex-husband. Under those circumstances, she had a reason to enter the grounds, whether at a subsequent stage behind the scenes activities resulted in her becoming unwelcome in the estate.

[52] A couple of points, on reading the judgment of the Magistrate in the trial court need attention.

[52.1] Firstly, on two separate occasions in the judgement, the Magistrate mentions the aspect of a “firearm”. In the first, she states that a shot had been fired. In the second, it is the drawing of the firearm. From the content of the judgment, the firearms use was with respect of the Appellant, and needless to say she, should a shot have landed on target she would have been the being the victim. There is no other explanation for this. This is problematic.

[52.2] Were the lives of any of the security guards being threatened by the Appellant?

[52.3] The irony of the whole situation that it is the intended victim of the firearm and/or the shot, that is being penalised by the Magistrate with early prohibition to possess a firearm.

[52.4] The question to be speculated on is whether the whole matter against the Appellant was not fabricated in order to ensure that any possible repercussions with respect to the “shot” and the “drawing” of the firearm could be blunted.

[53] The charge of the Appellant trespassing must be examined based on the following:

[53.1] The evidence before this court is that there is a gate which has to be opened and closed by the security official. No evidence was brought to court to show that the applicant had caused either damage or breakage in order to enter the property. The gate therefore would have had to be opened for the Applicant.

[53.2] No evidence was brought to court that there is a sign indicating that entering the estate, even when the gate is open, that such constitutes trespassing. Hence a visitor would have been unaware of such a rule.

[53.3] Should there have been a sign or other indication that trespassing is not permitted, such would in any event have been overruled by the applicant being let in. Hence the Applicant's presence within the premises would have been justified.

[53.4] The Applicant had a valid reason to enter the estate, in order to visit her ex-husband.

[53.5] The court heard that there was video footage available. However, same was not brought to court and this raises a question mark over whether the events, as claimed by the State, actually took place in the manner that the State alleges. The State witnesses might have had a motive to embellish their evidence in a favourable way with respect to their actions on the day in question.

[54] Under the circumstances that the appellant had entered the grounds of the estate and did so without breaking or smashing anything, and as she has claimed drove through the visitors' entrance, nothing further can be said other than that the appellant, in addition to the concession of the State was not guilty of trespassing. In the circumstances, the judgment of the magistrate, must be overturned in its totality. A part that is missing from this whole episode is the fact that the magistrate has stated in her judgment that "a shot was fired" and a "firearm" produced. Yet, ironically, it was that magistrate who then ruled about the position of a firearm in the future by the appellant.

[55] The concession by this stage with regard to Count No. 3, is evidence enough that the Magistrate erred in her judgment.

CONCLUSION

[56] The trial of the Appellant in the court *a quo*, was without doubt, not a fair trial. Apart from not being represented, the appellant did not receive assistance as required by the Constitution and case law.

[57] The charge of assault is not supported by the facts. The details clearly show that the Appellant neither assaulted nor had the intent to do so. She was in fact a victim of a security guard who could have caused severe injury. That the Appellant should not have been found guilty by the Magistrate is clearly supported by the State in their heads of argument.

[58] With respect to the charge of trespass, the presence of the Appellant in the Estate could in no way be regarded as one of trespass. The elements of trespass are clearly not present and to exacerbate the situation the Estate security attempted to stop the Appellant when she was leaving the Estate.

[59] Based on what transpired the Appellant should never have had as part of the sentencing process by the court *a quo* prevented from acquiring a firearm.

[60] From the above, for the Appellant to have been found to be guilty beyond reasonable doubt on either of the charges is an injustice and simply not sustainable.

ORDER

[61] In the circumstances, I propose the following order:

[61.1] The appeal is upheld.

[61.2] The judgment of the Magistrate's Court is set aside and replaced with:

"The accused is acquitted on all charges".

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L BARIT

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I AGREE, AND IT IS SO ORDERED _____

A MILLAR

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:	24 MAY 2023
JUDGEMENT DELIVERED ON:	5 SEPTEMBER 2023
COUNSEL FOR THE APPELLANT:	ADV. AC ROESTORF
INSTRUCTED BY:	VAN ROOYEN ATTORNEYS,
REFERENCE:	MS. C VAN ROOYEN
COUNSEL FOR THE RESPONDENT:	ADV. GJ MARITZ
INSTRUCTED BY:	OFFICE OF DIRECTOR OF PUBLIC PROSECUTIONS PRETORIA

REFERENCE: E25/700/2019