279/1958

G.P.-S.1568732—1956-7—9,000. S. 157/59 U.D.J. 445.

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(APPELLATE DIVISION).
AFDELING).

279/1958

(Original V Record)

APPEAL IN CRIMINAL CASE.
APPÈL IN STRAFSAAK.

ALFRED MAILULA

Appellant.

versus/teen

THE QUEEN

Respondent.

Appellant's Attorney _____ *Respondent's Attorney* _____
Prokureur van Appellant *Prokureur van Respondent*

Appellant's Advocate J.H. Loots *Respondent's Advocate* A. Schreiber.
Advokaat van Appellant *Advokaat van Respondent*

(Leave-TPD)

Set down for hearing on:— ~~Tuesday 13/2/1957~~ & ~~14/5/57~~.
Op die rol geplaas vir verhoor op: (A) Monday, 9th November 1959.

1 2 ~~3~~ 6 ~~7~~ 10 11
9.00 a.m. to 12.10 p.m. C.A.V.

Portea: Donderdag 19 November 1959.

Appèl word van die hand gewys.

D.D. Rautenbach
Griffier.

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

(Appélafdeling)

Insake:-

ALFRED MAILULA Appellant

en

R E G I N A Respondent

Verhoor deur:Steyn H.R.,Schreiner,Van Blerk RR.A. en Van Wyk en Holmes W.RR.A.

Datum van Verhoor: 9-11-39 Leweringsdatum: 18-11-1939

U I T S P R A A K

STEYN H.R. :- Die appellant is deur die landdros van Pietersburg skuldig bevind aan 'n misdryf ingevolge artikel 1(a) gelees met artikel 2 (1) van die Wet op Voorkoming van Onregmatige Plakkery, 1951, en het sonder gevolg na die Transvaalse Provinsiale Afdeling daarteen geappelleer. Hy is nou in hoër beroep voor hierdie Hof.

Die feite is nie in geskil nie. Al wat die appellant op steun is die beweerde ongeldigheid van die Proklamasie waarby genoemde Wet in die distrik Pietersburg, waar die misdryf gepleeg is, van toepassing verklaar is. Luidens artikel 11(1) is die Wet, behalwe die bepalings van artikel 9, "alleenlik van krag in sodanige gebiede as wat deur die Goewer-

neur/.....

" -neur-generaal by proklamasie in die Staatskoerant van tyd tot
" tyd bepaal word, en vanaf sodanige datum as wat aldus geprokla-
" meer word." Die proklamasie waaroor dit gaan is afgekondig op
17 Desember 1954 en lees as volg :

"Kragtens die bevoegdheid my verleen by artikel 11(1) van die Wet op die Voorkoming van Onregmatige Plakkery,1951 (Wet No. 52 van 1951), verklaar ek hierby dat die bepalings van genoemde Wet met ingang van die datum van afkondiging hiervan op die magistraatsdistrik Pietersburg van toepassing is. "

Vir sover dit hier ter sake is, bestaan die betrokke misdryf daarin dat grond of 'n gebou sonder wettige rede betree of binnegegaan word of dat op of in grond of 'n gebou, sonder verlof van die eienaar of wettige okkupeerder daarvan, vertoef word.

As eerste ongeldigheidsgrond word aangevoer dat die proklamasie 'n retrospektiewe uitwerking het, omdat dit die Wet van toepassing verklaar met ingang van die datum van afkondiging van die proklamasie d.w.s. met ingang van 17 Desember 1954. Die terugwerkendheid sou ontstaan uit artikel 13(2) van die Interpretasiewet,1957, wat as volg lui :

"Wanneer bepaal word dat 'n wet of enige voorskrif.....regulasie of verordeninge wat kragtens 'n wet gemaak,uitgereik of uitgevaardig is, op 'n bepaalde dag in werking tree,word dit beskou onmiddelik na afloop van die vorige dag in werking te tree. "

Ingevolge hierdie bepaling sou Wet

No. 52 van 1951 dan uit hoofde van die proklamasie om middernag tussen 16 en 17 Desember in die distrik Pietersburg in werking getree het, d.w.s. nog voordat die afkondiging op 17 Desember werklik sou geskied het, met die gevolg dat 'n betreding of verblyf waarop artikel 1 (a) gelees met artikel 2(1) van die Wet slaan, gedruf sou word ook ten aansien van die tydbestek tussen middernag en die oomblik van afkondiging van die proklamasie. Deel van hierdie redenering is die bewering dat die uitdrukking "met ingang van die datum van afkondiging hiervan" beteken dat genoemde datum en nie die volgende dag nie, die aanvangsdatum is. Vir die doeleindes van hierdie appél sal ek aanvaar dat die bewering gegrond is. Dit sou dan volg, meen ek, dat die proklamasie wel die beweerde mate van retrospektiwiteit sou teweegbring. Die vraag is of die proklamasie om die rede ongeldig is.

Bedoelde mate van terugwerkendheid is 'n alledaagse en aanvaarde bykomstigheid by die inwerkingtreding van alle wette wat met hul afkondiging van krag word, d.w.s. van verreweg die meeste wette wat deur die Parlement, die Provinsiale Rade en die wetgewende instansies van voor die Unie uitgevaardig is. Dit sluit in wette waarby bestaande regte aangetas en misdrywe geskep word. By gedelegeerde wetgewing is dit en was dit nog altyd ewemin 'n ongewone verskynsel dat dit op die dag van afkondiging in werking gestel word. Dit blyk nie

dat/.....

dat die geldigheid van sulke wetgewing, behalwe in die geval van Rex v. Zock (1927 T.P.D. 682), waarop ek later terugkom, op grond van die onderhawige mate van terugwerkendheid in twyfel getrek is nie. Waar die Parlement dan ondergeskikte wetgewing magtig op 'n wyse wat die inwerkingtreding daarvan op die dag van afkondiging nie uitsluit nie, sou, met die oog op die die langgevestigde, algemene en bekende gebruik, met redelikheid vermoed kan word dat 'n dergelike insidentele retrospektiwiteit nie buite die bedoeling van die wetgewer lê nie. Artikel 11(1) van die Wet dra dit aan die Goewerneur-generaal op om by proklamasie die gebiede te bepaal waarin die Wet van krag is, asook 'n datum vanaf welke die Wet daarin van krag is. Nóg in die aard van die opdrag, nóg in die bewoording waarin dit geklee is, kan ek 'n aanwysing vind van 'n bedoeling dat die datum noodwendig een na die afkondiging van die proklamasie moet wees en nie daarmee mag saamval nie. Het daar so'n bedoeling bestaan, sou dit voor die hand gelê het dat die gerade sou wees om dit in woorde uit te druk, en sou 'n gepaste bewoording geredelik gevind kon geword het. In plaas daarvan het die wetgewer in artikel 11(1), ten aansien van die bepaling van 'n datum, 'n bewoording gevolg wat wesenlik ooreenslaan met die bewoording van artikel 11(2), wat die Goewerneur-generaal magtig om by proklamasie die Wet in 'n betrokke gebied of 'n gedeelte daarvan, "vanaf 'n datum in

"so'n/.....

" so'n ~~XXX~~ proklamasie gemeld", buite werking te stel. In die Engelse teks word in artikel 11(2) die uitdrukking "as from a "date to be stated in such proclamation" gebruik, terwyl in artikel 11(1) verwys word na "from such date as may be so proclaim-"ed". Ook in hierdie verskil in bewoording kan ek geen ~~ter~~ saaklike verskil in betekenis bespeur nie; en dit sou moeilik staande gehou kan word dat dit in artikel 11(2) die bedoeling ~~was~~ is om die inwerkingtreding van die desbetreffende proklamasie op die dag van die afkondiging daarvan uit te sluit.

Die uitwerking van 'n gedeeligeerde voorskrif kan van so'n aard wees dat dit die gevolgtrekking regverdig dat die magtigende wet nie onmiddelike inwerkingtreding daarvan by proklamasie beoog nie. In Rex v. Zock, supra, handel oor so'n geval. Daar het dit gegaan oor 'n proklamasie kragtens artikel 5 van Wet No. 21 van 1923, waarby naturelle in 'n stadsgebied aangesê is om vanaf 'n bepaalde ~~ky~~ datum in 'n lokasie, naturelledorp of naturelle-tehuis te woon. Die Hof het aangeneem dat dit die bedoeling van die wetgewer was dat so'n proklamasie nie uitgereik moet word nie tensy die Goewerneur-generaal ~~o~~overtuig is dat daar voldoende huisvesting bestaan waar die naturelle moet gaan woon. Die datum wat van die betrokke proklamasie bepaal het, was dieselfde as die datum van afkondiging, en dit was gemene saak dat dit nie vir die betrokke naturelle doen-

lik/.....

lik sou gewees het om op daardie datum van verblyf te verander nie. BARRY R. merk in dié verband op: " when the proclamation "is construed in terms of section 14(2) of the Interpretation "of Laws Act 5 of 1910 it came into operation immediately on the "expiration of the 17th February so that non-compliance on the "18th with the duty imposed would be a contravention of the Act. "And the 18th February is the date on which the persons affect-"ed can first become aware of the Act coming into force. Con-"strued in the light of the Interpretation Act, the proclamation "has retrospective effect, and in any event on the facts the duty "imposed on the natives cannot be carried out on the date speci-"fied, so that the proclamation is invalid because the date "specified is bad and cannot be adopted. The proclamation should "fix a date which will give the natives a reasonable time to "move from the scheduled urban areas to a location, native vil-"lage or hostel."

Dit is duidelik, meen ek, dat die gevolgtrekking waartoe die Hof geraak het, nie bloot op die beperkte retrospektiewiteit van die proklamasie berus nie. Hoewel dit bygehaal is by die motivering, is die meer wesenlike grond die ondoenlikheid van 'n omskrewe verblyfsverskuiwing op die dag van die proklamasie, en nie die retrospektiewiteit ten aansien van 'n deel van daardie dag nie. In die huidige geval word so'n ondoenlikheid nie aangevoer nie, óf as 'n algemene omstandigheid

wat die toepassing van die 1951 Wet altyd sal vergesel, óf as 'n omstandigheid wat in die distrik Pietersburg aanwesig was. Daarbenewens het die Wet nie betrekking op wettige okkupeerders nie. Dit is gerig teen onregmatige plakkery. Ek kan bygevolg nie bevind dat daar ooreenstemmende redes bestaan om aan te neem dat die wetgewer bedoel het dat 'n proklamasie ingevolge artikel 11(1) altyd 'n redelike tydperk na afkondiging moet laat vir verblyfsverandering nie. Dit is denkbaar dat ten aansien van 'n bepaalde gebied dit so onredelik sou wees om dit nie te doen nie dat die versuim om dit te doen aanvegbaar sou wees, maar op die gegewens voor hierdie Hof is daar geen aanduiding dat die onderhawige so'n geval is nie. Al wat in hierdie verband aangevoer is, is die onredelikheid van die reeds genoemde retrospektiwiteit en van die toepassing van die Wet op die dag van afkondiging, 'n dag waarop die betrokke persone nog nie van die uitvaardiging van die proklamasie kon geweet het nie. Ook laasbedoelde omstandigheid is, gesien die uitgestrektheid van ons land, 'n onvermydelike insident by alle wetgewing wat by promulgasie onmiddelik van krag word en die oorwegings in verband met retrospektiwiteit genoem, geld ook ten aansien daarvan. Wat bedoelde onwetendes betref is dit heel onwaarskynlik dat die Wet ten aansien van 'n tydperk van onvermydelike onwetendheid teen hulle toegepas sal

word./.....

word. Onredelike optrede van daardie aard word nie sonder meer veronderstel nie (Johannesburg City Council v. Constandelas 1936 A.D. 1 op bladsy 17; Rex v. Abdurahman, 1950(3) S.A. 136 op blasdy 150). Dit is 'n oorweging wat met omsigtigheid aangewend moet word en wat nie as regverdiging vir iedere onredelikheid kan dien nie, maar dit neem nie weg nie dat so'n geringe moontlikheid as wat hier ter sprake is, weinig gewig kan dra; en of so'n onwetendheid bestaan of nie, sou, waar nakoming van die Wet ten tyde van die ten laste gelegde misdryf inderdaad onmoontlik was, die onmoontlikheid as 'n voldoende verdediging kan dien.

Om genoemde redes is ek van oordeel dat die proklamasie nie omgeldig is nie.

Die appél word van die hand gewys.

L. Schreiner

Schreiner, A.R.
Van Blerk, A.R.
Van Wyk, Wn. A.R.
Holmes, Wn. A.R.

Stem saam.

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF PIETERSBURG, HOLDEN AT PIETERSBURG.

REGINA versus ALFRED MAILULA

FURTHER REASONS FOR JUDGMENT IN TERMS OF RULE 63(4) OF THE MAGISTRATE'S COURT RULES.

According to a minute received from the Attorney-General on the 23rd September, 1958 it appears that Appellant was, on 15th September, 1958, granted leave to amend his original notice of appeal by adding the following ground of appeal:

"5. The conviction is bad in law in that Proclamation 260 of the 17th December 1954, in terms of which the Governor-General purported to apply the provisions of Act 52 of 1951 to the Magisterial district of Pietersburg, is ultra vires section 11(1) of the Act and consequently invalid on the following grounds:-

(a) The proclamation has retrospective effect and the Governor-General is not empowered by section 11(1) to apply the provisions of the Act retrospectively; and/or

(b) The Governor-General in issuing the Proclamation did not comply with section 11(1) in that the proclamation provides that the Act shall apply with effect from the date of promulgation of the proclamation and the section requires that the date of coming into force of the Act shall be subsequent to the date of promulgation of the Proclamation; and/or

(c) The Governor-General in exercising the power conferred upon him by section 11(1) acted

unreasonably in that the effect of the Proclamation was that the remaining on land without the permission of the owner or lawful occupier, which was not an offence on the 16th December, 1954 became an offence on the 17th December 1954, being the date of promulgation of the Proclamation and persons were not given a reasonable time after promulgation to vacate the land so occupied."

Proclamation No. 260 of 1954 is the Proclamation by which the provisions of Act 52 of 1951 were applied to the Magisterial district of Pietersburg. It was signed by the Governor-General on the 7th day of December 1954 and promulgated in Government Gazette No. 5391 on the 17th December 1954.

The added ground of appeal attacks the validity of the Proclamation in that it is alleged to be ultra vires section 11(1) of Act 52 of 1951, the enabling Act.

Section 110 of the Magistrate's Court Act, No. 32 of 1954, reads as follows:-

"No Magistrate's Court shall be competent to pronounce upon the validity of a provincial ordinance or of a statutory proclamation of the Governor-General and every such Court shall assume that every such ordinance or proclamation is valid."

This court therefore has no jurisdiction to decide upon the validity of the proclamation and has to assume its validity.

(Sgd.) G.A. ROBERTSON.
ADD. MAGISTRATE : PIETERSBURG.
24.9.1958.

IN THE SUPREME COURT OF SOUTH AFRICA

Transvaal Provincial Division.

13th November, 1958.

ALFRED MAILULA v. REGINA

GALGUT, A.J.: The appellant was found guilty of contravening Section 1(a), read with Section 2(1) of Act No. 52 of 1951 (Prevention of Illegal Squatting Act), read with Proclamation No. 260 of 1954, in that during the period 3rd November, 1956, to the 22nd January, 1957, he wrongfully and unlawfully entered upon or remained on the farm La Rochelle in the district of Pietersburg, which is in an area which has in terms of Section 11(1) of Act No. 52 of 1951 been defined as an area to which the provisions of that Act apply. It is alleged in the indictment that he remained on the farm La Rochelle in the district of Pietersburg without the permission of the owners or the lawful occupiers thereof.

There were originally 12 other persons accused together with the appellant, but during the course of the trial a separation of trials was ordered and the Crown first proceeded against the appellant, who was accused No. 1.

For the purposes of this appeal the following facts are common cause: The farm falls within an area to which the Act applies. The appellant, together with the other accused, had been living on that farm for many years prior to 1948. In 1948 they were given proper notice to vacate the farm, and this they have not done. The appellant and the other accused knew of the contents of Proclamation No. 260 of 1954 because they were previously prosecuted for the same offence. The charge sheet in that

matter was defective. The relevance of the previous prosecution was to indicate that the appellant and the other accused had full knowledge of the Proclamation. The appellant is on the farm without the necessary permission.

The relevant sections of Act No. 52 of 1951 are: (The underlining is my own).

Section 1(a): "Save under the authority of any law, or in the course of his duty as an employee of the government or of any local authority, no person shall -

(a) enter upon or into without lawful reason, or remain on or in any land or building without the permission of the owner or the lawful occupier of such land or building whether such land is enclosed or not."

Section 2(1): "any person contravening the provisions of section one shall be guilty of an offence and liable to a fine not exceeding twenty-five pounds, or to imprisonment for a period not exceeding three months, or to both such fine and such imprisonment."

Section 11(1): "Save and except the provisions of section nine, this Act shall be in force only in such areas as may be defined from time to time by proclamation by the Governor-General in the Gazette, and <u>from</u> such date as may be so proclaimed."

Section 11(2): "The Governor-General may at any time declare by proclamation in the Gazette that as from

a date to be stated in such proclamation this Act shall no longer be in force in any area defined in terms of sub-section (1), or in any portion of such area."

The relevant portion of the Proclamation reads:

"Under the powers vested in me by Section 11(1) the Prevention of Illegal Squatting Act, 1951 (Act No. 52 of 1951), I do hereby declare that the provisions of the said Act shall apply to the Magisterial District of Pietersburg with effect from the date of promulgation hereof."

The Afrikaans version reads:

"Kragtens die bevoegdheid my verleen by Artikel 11(1) van die Wet op die Voorkoming van Onregmatige Plakkery, 1951 (Wet No. 52 van 1951), verklaar ek hierby dat die bepalings van genoemde Wet met ingang van die datum van afkondiging hiervan op die magistraatsdistrik Pietersburg van toepassing is."

This Proclamation is dated the 17th December, 1954.

The notice of appeal, as amended, raised several grounds but Mr. Loots, who appeared for the appellant, argued only the ground set out in paragraph 5. That ground of appeal is divided into three sub-paragraphs, and reads:

"5. The conviction is bad in law in that Proclamation 260 of the 17th December, 1954, ... is ultra vires Section 11(1) of the Act and consequently invalid on the following grounds:

(a) The Proclamation has retrospective effect and the Governor-General is not empowered by Section 11(1) to apply the provisions of the Act retrospectively; and/or

(b) The Governor-General in issuing the Proclamation did not comply with Section 11(1) in that the Proclamation provides that the Act shall apply with effect from the date of promulgation of the Proclamation and the section requires that the date of coming into force of the Act shall be subsequent to the date of promulgation of the Proclamation; and/or

(c) The Governor-General in exercising the power conferred upon him by Section 11(1) acted unreasonably in that the effect of the Proclamation was that the remaining on land without the permission of the owner or lawful occupier, which was not an offence on the 16th December, 1954, became an offence on the 17th December, 1954, being the date of promulgation of the Proclamation and persons were not given a reasonable time after promulgation to vacate the land so occupied."

Mr. Loots, in support of the ground set out in paragraph (a) above, argued that the Proclamation came into operation immediately on the expiration of the 16th December, 1954, that is within one second after midnight on the 16th December, 1954. For that submission he relied on the Afrikaans version of the Proclamation, on Section 12(3) of Act No. 33 of 1957, the Interpretation Act, and on the meaning which is not infrequently attributed to the word "from" in many of our Statutes and decided cases.

For the purposes of this appeal I am assuming that the wording of the Proclamation and the effect of

Section 13(2) of Act No. 37 of 1957 is that this Proclamation did in fact come into force within one second after midnight on the 16th December, 1954. On that assumption Mr. Loots relies strongly on the case of Rex v. Zock, 1927 T.P.D. 582, in which he says this Court held that any legislation made by any person to whom authority has been delegated and which is retrospective is bad unless the enabling Statute specifically authorises retrospectivity. An examination of the case of Rex v. Zock indicates that the learned Judges in that case were faced with two problems: The first was the question of retrospectivity and the second was the impossibility of performance of the acts set out in the relevant Proclamation. At page 584 BARRY, J., who delivered the judgment, is reported as saying:

> "Indeed, when the proclamation is construed in terms of section 14(2) of the Interpretation of Laws Act 5 of 1910 it came into operation immediately on the expiration of the 17th February so that non-compliance on the 18th with the duty imposed would be a contravention of the Act. And the 18th February is the date on which the persons affected can first become aware of the Act coming into force. Construed in the light of the Interpretation Act, the proclamation has retrospective effect, and in any event on the facts the duty imposed on the natives cannot be carried out on the date specified, so that the proclamation is invalid, because the date specified is bad and cannot be adopted. The proclamation should fix a date which will give the natives a reasonable time to move from the scheduled urban areas to a location, native village or hostel."

11(1) and the use of the word "from" therein indicates clearly that the proclamation must fix a date in the future. His authority for that submission is Stroud, Volume II, page 1182, and the cases there cited. He also relied on the case of The Goldsmiths' Company v. The West Metropolitan Railway Company, 1904(1) K.B.D. 1, and the dicta appearing at page 5 of that judgment. Those authorities indicate that in legislation, when the word "from" is used and a date is given the day on which the notice itself appears is excluded. He also drew our attention to cases to the contrary effect, namely, Glassington and Others v. Rawlings and Others, English Reports, Volume 102, page 653, and Retail Traders Financial Corporation Ltd. v. Registrar of Deeds, 1953(2) S.A. at p. 297. The weight of authority he urges indicates that the words "and from" such date as may be so proclaimed in Section 11(1) indicate that the Governor-General could only have issued a proclamation having effect after the date on which it appears and not on the date of publication as in this case.

The difficulty which I have with this argument raised by Mr. Loots appears from the wording of Section 11(2) of the same Act. It will be seen that where the Governor-General has to declare by way of proclamation in the Gazette that a particular area shall no longer be subject to the provisions of Act No. 52 of 1951, the words are "that as from a date to be stated". The fact that the Legislature decided in Section 11(2) to use these words indicates that they intended that when an area was to be deproclaimed that a future date would be specified. Different words are used when an area is to be defined. This difference in wording between Sections 11(1) and (2),

in my view, indicates that when an area is to be defined the Governor-General need not fix a day in the future. The purpose of the statute and the purpose of defining an area also suggest that immediate effect is desirable.

For these reasons the ground of appeal set out in (b) must fail.

The third ground of appeal rested on the fact that the proclamation was invalid for want of reasonableness in that it did not give the persons concerned time to vacate the area or any portion of the area if they were occupying unlawfully. It is because of this want of reasonableness, so it is urged, that the proclamation is rendered invalid.

The answer to that submission is to be found in cases like Rex v. Mannheim, 1943 T.P.D. 169. The relevant portion of the headnote, which correctly reflects the judgment, reads:

> "Held, further, that the regulation was not invalid on the ground that it rendered unlawful a possession which was in its inception lawful inasmuch as the accused would escape conviction where he had not had a reasonable opportunity for discontinuance of the possession....".

At page 173 of that report MILLIN, J., who delivered that judgment, is reported as saying:

> "The principle to be applied is that laid down in Burns v. Nowell (£ Q.B.D. 444, at p. 454). It is thus stated in 9 Hailsham, sec. 9, at p. 17:
>
> > 'A continuous act or proceeding, not originally unlawful, commenced before the passing of a statute which prohibits it, cannot be treated as unlawful by reason of the passing of the

statute, until a reasonable time has been allowed for the discontinuance of the act or proceeding; and in considering what is reasonable time for such discontinuance the question whether a person is or is not ignorant of the passing of the statute or whether his ignorance is in the circumstances excusable may be taken into account.'"

Mannheim's case was also considered in the case of Mokanyana v. Vereeniging Municipality, 1951(1) S.A. 587. There ROPER, J., at page 588, quoted the above passage from Burns v. Nowell with approval and went on to say:

"It seems to me that this rule of criminal law purges the by-law or Regulation of the attribute of unreasonableness which it might otherwise have been held to possess. The rule of criminal law prevents the application of the Regulation in such a way as to cause hardship of the nature suggested and, therefore, the by-law cannot be held unreasonable on that ground."

With these dicta of the learned Judge I am in respectful agreement. The regulation with which we here have to deal came into force on the 17th December and if any person affected thereby had not or could not on the specific facts have vacated within a day or so after its appearance, and had he been prosecuted, he would have been exempted from criminal responsibility on the grounds set out in Mannheim's case and Mokanyana's case.

For those reasons I am of the view that the proclamation is not invalid for want of reasonableness. The appellant had been resident on this farm for many

years before this proclamation came into effect. It is clear that he knew of its contents and had at least two years before November 1956 in which to leave the farm. This he failed to do.

For the above reasons the appeal should be dismissed and the conviction and sentence confirmed.

THERON, J.: I agree. The appeal is dismissed and the conviction and sentence are confirmed.