CASE NO.: SA16(A)/2001

IN THE SUPREME COURT OF NAMIBIA

In the matter between :

JOHN SAM
APPELLANT

And

THE STATE
RESPONDENT

Coram: Strydom, C.J., Chomba, A.J.A. *et* Manyarara, A.J.A.

Heard on: 08/04/2002

Delivered on : 03/10/2002

APPEAL JUDGMENT

Chomba, A.J.A.

John Sam was charged before the High Court (O'Linn, J) jointly with Stephen Shakatimba, a Nigerian national and Maria Sam who is John Sam's mother. The charges preferred against the three were as follows :

Count 1 – statement of offence

Contravening Section 2(c) of Act 41 of 1971 – dealing in dangerous dependency producing drugs.

In that on or about 8th September 1996 at or near Windhoek in the District of Windhoek the accused unlawfully and intentionally dealt in dangerous dependence producing drugs, or any plant from which such drugs can be manufactured to wit 4,735 kg of cocaine Alternatively –

Count II – statement of offence

Contravening Section 2(d) of Act 41 of 1971 – possession of dangerous producing dependency drugs.

In that on or about 8th September 1996 at or near Windhoek in the District of Windhoek the accused had in their possession a dangerous dependency producing drug or any plant from which such a drug can be manufactured to wit 4,735 kg of cocaine.

At the onset of the trial the particulars of offence on both accounts were amended in that the weight of the drug charged was stated as 5,51 kg. A full trial ensued and at the end Maria Sam was acquitted. Stephen Shakatimba and John Sam were both convicted on the main

charge and were sentenced to ten years imprisonment each. Of the two convicts only John Sam has appealed and his notice of appeal shows that he was aggrieved by both conviction and sentence. His appeal was ably argued before this court by Mr. G. Barnard, briefed by H. Barnard and Partners, while the State, as respondent, was equally ably represented by Mrs. C. Barnard on behalf of the Prosecutor General.

The appeal against conviction was prosecuted on two grounds, viz –

(a) As to the integrity of the drug cocaine, whether what was said to have been found in the possession of convict Stephen Shakatimba at the time of his arrest was the same with which the appellant was charged and later convicted of dealing in.

(b) Whether the appellant had guilty knowledge in relation to the possession of the said cocaine.

The case against the appellant was that he forged a friendship with some Nigerians whom he casually met here in Windhoek. One of them told him that a friend of his resident in South Africa was exploring the possibility of using the appellant's address in Windhoek for the purpose of receiving mail from Brazil in South America. The appellant gave his mother's post box in that connection and this was used on two

occasions. On the last of these occasions Stephen Shakatimba, the appellant's co-accused who has not appealed, was used as a courier to pick up the mail. He was sent by the South African based recipient of the mail. That person had earlier phoned the appellant and told him that some mail was being expected from South America and that he would send someone from South Africa to Windhoek to pick it up. When Stephen Shakatimba arrived in Windhoek he was received by the appellant and stayed with the appellant at the appellant's mother's place in Katutura Township. Not long after Shakatimba arrived the appellant's sister, Mrs. Vries, collected three parcels which had arrived from Brazil. The appellant took the parcels from the boot of her car and handed them to Stephen Shakatimba. This was just after midday and on the same day the appellant accompanied Stephen Shakatimba to the Inter Cape Main- liner bus terminal in Windhoek where Stephen Shakatimba made a booking for his return journey on Sunday, 8th September 1996.

On 8th September 1996 the watchful eyes of Bryan Karl Eiseb, the first prosecution witness, spotted a suspicious looking man who was boarding a South African bound bus at the said bus terminal in Windhoek. The man having entered the bus, Constable Eiseb entered the bus also and went straight to that man. He interviewed him briefly and discovered that the man, who turned out to be Stephen

Shakatimba, was travelling on a Zambian passport although he was a Nigerian national based in South Africa. The man's piece of luggage which Constable Eiseb took special interest in was a black carrier bag. He opened this in the presence of Stephen Shakatimba and Willem M. du Plessis who, like Constable Eiseb, belonged to the Drug Enforcement Unit of the Namibian Police Force. The bag was in due course found to contain five files each of which yielded two plastic envelopes. In each such envelope there was a powdery substance. Having taken Stephen Shakatimba to the Drug Enforcement Unit the police put all the powder in one receptacle and weighed it. It was 4,735 kg. Constable Eiseb sealed the container in which the powder was with seal 0007 which is the official seal. He then delivered this to the National Forensic Science Institute of Namibia for chemical analysis. It is necessary to record that before the substance was delivered to that Institute Constable Eiseb carried out a test on the powder which he called a speedy colour reaction test. Describing the test he said a tiny quantity of the powder is placed in a bowl and "two reagents" are added to it. If the powder is cocaine then upon adding the reagent to it changes colour from the usual off-white colour to blue. This is what in fact happened.

At the Forensic Science Institute Laboratory the powdery substance was weighed a couple of times. This is according to the evidence of

John Alweendo Shameya, a Forensic Analyst. Shameya stated so both in his affidavit, exhibit D, in the court *a quo* and in his oral testimony at the trial. On the first occasion the total weight of the substance was 4,60 kg. However on the second weighing the total weight was 5,51 kg made up of the following :

(a) an off-white powder which was pure cocaine weighing .82 kg and

(b) a white powder with a total weight of 4,69kg containing a negligible quantity of cocaine and the rest of the substance was not identified.

When Constable Eiseb later retrieved the powder from the Forensic Science Laboratory he noticed that it had changed its colour from off-white to "more whitish", quoting his own evidence.

Contentions as to the integrity of the powder

As noted earlier, the first issue which Mr. Barnard argued, and did so hotly, was in regard to the cocaine in connection with which the appellant was convicted. The argument he raised was two-pronged. First he commented on the fact that the colour of the powder which was recovered from the accused Stephen Shakatimba was off-white. However the powder later collected by Constable Eiseb from the Forensic Science Laboratory was, in the words of the constable, "more

whitish in colour." The second leg of the argument was in regard to the weight of the powder. In this connection Mr. Barnard highlighted the evidence of Constable Eiseb who said that when he weighed the powder on what he called an electronic scale it was 4.735 kg. At the Forensic Science Laboratory when it was weighed for the first time by John Alweendo Shameya in the presence of Constable Eiseb the weight was 4.60 kg. On a later occasion when weighed after it had been chemically analysed and separated into pure cocaine and a mixture of cocaine and the unidentified substance the total mass was 5.51 kg.

In the light of the two varying phenomena regarding colour and weight, Mr. Barnard hotly contended that the powder recovered from Stephen Shakatimba was not the same as the one released from the Forensic Science Laboratory. His submission was that the powder handed in by the police to the laboratory had been compromised and therefore the conviction of the appellant and his co-accused Stephen Shakatimba was based on an alien powder. To this end Mr. Barnard criticized the evidence of Dr. Ludik which was directed at proving that only one powder, namely the one brought in by the police, was processed there and later handed back to the police.

Dr. Ludik's evidence was significant in two respects. As to the change of colour which was noticed by Constable Eiseb when he collected the

powder from the laboratory, namely a change from off-white to more white, he testified that it was in the character of cocaine to change colour. It had been proved at the laboratory that cocaine was an extremely volatile substance like any other hydroscopic salt. It reacts with the atmosphere when it is in a container which is not pneumatically sealed. In his expert opinion, such reaction with the atmosphere definitely causes discolouration. In expressing this opinion Dr. Ludik was very emphatic.

Regarding the weight changes of 4.735 kg, then 4.60 kg and lastly 5.51 kg, it merged during the evidence of Dr. Ludik that at the Drug Enforcement Unit they used a scale which was described merely as an electronic scale. According to Dr. Ludik the term “electronic” is nebulous and does not import an idea as to its accuracy in taking measurements. He stated that normally a manufacturer of scales states on his products their weight limitations as to accuracy. At the National Forensic Science Institute Laboratory the scale first used was an industrial scale. This scale, Dr. Ludik stated, does not guarantee accuracy of measurements and cannot correctly register the first 500 grams. Finally on the third occasion a chemical scale was used. This was after a chemical separation was carried out and it was found that the cocaine which was pure weighed .82 kg while the remaining powder with only a trace of cocaine weighed 4,69 kg, making a total of

5,51 kg. It was Dr. Ludik's evidence that the scale used at that stage is the one that is intended for fine measurements which can record up to three decimal points. Additionally, according to Dr. Ludik, cocaine is by its nature hydroscopic. This means that when it is contained in a package which is not pneumatically sealed, it reacts with atmospheric vapour. In doing so weight change may result owing to accretion of the atmospheric vapour.

All the foregoing expert evidence of Dr. Ludik was accepted by the judge *a quo* . In the event the judge held that the change of colour and weight was attributable to the hydroscopic character of cocaine coupled with the fact that different scales were used on the three separate occasions. In my opinion the ratio of the learned trial judge was sound for the following reasons :

1. None of the prosecution witnesses who deposed as to the handling of the powdery substance confiscated from Stephen Shakatimba was discredited as to the reliability of their evidence. For example Constable Eiseb, though with a rudimentary experience in chemistry, testified that he conducted a speedy colour test on the powder and found that its reaction was that expected from cocaine: its colour changed from off-white to blue. His evidence on that point was unchallenged. Also

unchallenged was the affidavit and *viva voce* evidence of John Alweendo Shameya. He said that he received the powder under seal 0007 from Constable Eiseb who himself had earlier testified that he was the one who had affixed that seal to the package containing the cocaine and had handed it to John Alwendo Shameya. Shameya also testified that the same powder that he received from Constable Eiseb was the very same which he surrendered back to Constable Eiseb in due course. Equally Dr. Ludik did not succumb under the pressure of cross-examination.

2. As regards the weight of the cocaine, the fact that three different scales were employed is not without significance. All we know about the scale used at the Drug Enforcement Unit is that it was an electronic scale but that does not indicate its margins of accuracy. As to the industrial scale which was first used at the laboratory namely the industrial scale, Dr. Ludik's uncontroverted evidence was that it was not capable of accurately weighing masses of less than 500 grams. On the other hand the chemical scale used on the last occasion was proved to have accuracy to a third decimal point. The chemical scale was the most accurate of the three. In my considered opinion the difference in weight would have been of concern in

regard to the integrity of the powder if the three weights were recorded from one and the same scale.

Above all I must emphasize that the total effect of the evidence from the prosecution is that the one and same powder which the police found in the possession of Stephen Shakatimba is that which was handed to and analysed by John Alweendo Shameya at the laboratory and later handed back to the police. Moreover if the National Forensic Science Institute officers concerned with the handling of the powder received from the police had intended to compromise the integrity of that powder one would have expected them to substitute it with a powder totally different from cocaine. It does not make sense that a powder which was *prima facie* established by Constable Eiseb to be cocaine should be replaced by another cocaine by John Alweendo Shameya or indeed any other person at the Forensic Science Laboratory. In any event the further evidence of the prosecution witnesses was that when the powder received from the police reached the laboratory it was kept under lock and key, and was only released to Mr. John Alweendo Shameya when he was to carry out the chemical analysis. Later it was handed back to the police.

As the trial judge found the witnesses who handled the cocaine at all relevant stages to be credible witnesses this court is obliged to use the

well settled principle of law that an appellate court will be slow to interfere with the finding of a trial judge who had the opportunity of seeing and hearing the witnesses at first hand at the trial, an opportunity which an appellate court does not enjoy. In the event any finding by this court that the powder which was found in Stephen Shakatimba's possession was compromised at the Forensic Science Laboratory as suggested by Mr. Barnard would amount to impeaching the trial judge's finding based on the credibility of the witnesses Constable Eiseb, John Alweendo Shameya and Dr. Paul Ludik. Just as the principle itself is well settled, so also are the reasons justifying interference with its application well established in law. See **WATT & THOMAS V. THOMAS (1947) A.C. 484** and especially the speech of Lord Thankerton at pages 487-488. In the present case I find no reason for interfering.

I would therefore reject the appellant's argument suggesting that the cocaine on which the conviction of the appellant was based was not the same cocaine found in Stephen Shakatimba's possession.

Guilty Knowledge – *Mens Rea*

The contention canvassed with regard to guilty knowledge was that the appellant never knew the nature of the substance found in Stephen Shakatimba's possession. In the event, so the contention implies, the

appellant could not have known that Stephen Shakatimba and all the other persons concerned in the transference of the postal materials from Brazil through Namibia to South Africa were dealing in cocaine. In this connection it was further contended that the appellant's involvement if any, in the business of trafficking in cocaine could only be determined on the basis of circumstancial evidence. Such evidence permits of no inference of guilty knowledge being made against the appellant unless such inference is the only one capable of being made to the exclusion of all other inferences. The submissions made on the appellant's behalf detailed aspects of circumstantial evidence which the trial judge relied on and concluded that these were not capable of supporting an exclusive inference of guilt. I shall highlight some of these aspects.

The letter, exhibit "O", proved to have been written by Stephen Shakatimba in Windhoek prison to a certain Romance Mutale, himself a prisoner in Keetmanshoop prison, was one such aspect used by the trial judge in arriving at a conclusion that the appellant was an accomplice in the trafficking of cocaine. The judge held that in that letter the appellant was identified as Argi and appears to have accepted the assertions in the letter that Argi was paid N$14,000 for his part in the trafficking.

Mr. Barnard preferred to criticize the judge in this regard by arguing that the letter amounted to an improperly obtained piece of evidence and as such the judge ought not to have held its contents against the appellant. For this argument he relied on the case of the **State v. Hammer and Others, 1994(2) S.A.C.R. 496 (c).** The ratio of that case is that the trial court has an overriding discretion to exclude improperly obtained evidence if its prejudicial effect outweighs its probative value.

While in my view the above criticism is valid, I would rather found it on the settled principle of law that an extra-curial statement made by one of two or more persons jointly charged with a crime cannot and must not be held as evidence against any co-accused whom it purports to incriminate. This is what for instance, Colin Tapper, the learned author of the **7th edition of Cross on Evidence**, states on page 583 under the rubric, "co-defendants etc": He states "The out-of-court admission of a

co-defendant is not evidence against his fellow party to litigation by virtue of the mere fact that they are jointly involved in a particular transaction. This rule operates not only to bar the use of such admission as evidence in chief, but also to prevent use being made of the admission in cross-examination of the third party. See **R v WINDAS (1988) 89 Cr App Rep 258**."

The simple reason why such statement should not be held against anybody save its maker is that it was not made under any sanction which would have compelled the maker to avow its truth and furthermore the statement has not been subjected to scrutiny such as by cross-examination at the time it was made. The trial judge therefore misdirected himself firstly in allowing prosecution counsel to cross-examine the appellant on the contents of exhibit “O” and secondly by holding the contents against the appellant.

The learned trial judge also held that if, while he was in the room which he shared with the appellant, Stephen Shakatimba opened the parcel containing the cocaine, he had no reason not to have opened it in the presence of the appellant. To the like effect was presumed fact 14 appearing among those facts which the trial judge held to have been common cause or facts not seriously in dispute. The judge stated in his judgment that when the three parcels, the subject of the charge under consideration, were received from Brazil they were opened by the first accused i.e. Stephen Shakatimba or the second accused (i.e. appellant) or by one of them in the presence and to the knowledge of the other. With due respect to the learned trial judge that holding was purely speculative and not supported by a title of evidence save that the investigating officer testified, among other things, that some

plastic wrappers from the parcels received from Brazil were found in a dust bin at the appellant's home. This in my view was another misdirection on a matter of fact.

There are other factual misdirections made by the trial judge which I find unnecessary to delve into. However one fact stands out and does so beyond dispute. It is that the appellant established an association with persons involved in a triangular trafficking of cocaine from some town in South America, possibly Brazil, through Windhoek, Namibia, to Johannesburg in the Republic of South Africa. The question that fell to be resolved by the trial judge was whether the appellant got involved in the triangle with or without guilty knowledge. It was contended that the appellant believed that his association with those persons was innocent and therefore that he did not know that his mother's postal box was being used as a conduit in cocaine trafficking.

The scenario which was portrayed by the appellant in professing his innocence may be summarized as follows. On one occasion when he and his brother, now the deceased, went to a hair salon, the appellant fortuitously met a Nigerian referred to in the evidence as Callex Tjineto or Kallex Gineto. The latter had been staying at the home of the owner of the salon but Kallex expressed unhappiness at continuing to stay there because that owner was gay and had proposed to Kallex an

indecent association. Kallex asked if the appellant could provide him with alternative accommodation, a proposal which the appellant readily accepted. Kallex then moved to the appellant's home. The appellant was at the time, and had been since he left school in or about 1993, that is about two years before this chancy meeting, unemployed. The appellant was being kept by and was wholly dependent on his mother, who at the time was a bankrupt with only her former restaurant and shop providing family income as it was rented. The appellant testified that despite that income his mother was not a person who could be described as a moneyed person. In spite of her inadequate financial position the appellant's mother gave a nod to the idea of this strange Nigerian moving in to stay with the family.

Kallex stayed with the family for more or less one month, providing no contribution for his upkeep. When he finally wished to return to his base in the Republic of South Africa, Kallex had to be assisted with an amount of N$150 to enable him buy his ticket to travel by bus. This money was provided by the appellant's girlfriend who was herself a student at the time. Kallex promised to pay back the money by telegram and hence asked the appellant to let him have the appellant's postal address. The appellant gave him his mother's address.

On a second visit to Windhoek, Kallex came with another Nigerian named Austin otherwise known as Small or Smallboy or Kenneth Augustine. The two were again hosted by the appellant at his mother's house. The appellant was introduced to Austin. On this occasion Kallex paid back the loan. The visit this time was brief but again the hospitality extended to the two Nigerians was gratuitous. Not long after the said visit the appellant learned from Austin that Kallex had left for South America. Austin asked the appellant if the appellant's mother's post box could be used to receive some electrical or electronic spares from Kallex in South America which would then be redirected to him, (Austin) in Johannesburg. The reason given by Austin for this mode of transmission of the alleged postal material was that in Johannesburg he had no fixed address as he repeatedly relocated himself from hotel to hotel. He also told the appellant that he was doing a business of selling electrical/electronic spares hence the arrangement for such spares to be channelled through Windhoek. The appellant assented to this arrangement.

On the first occasion when the aforesaid arrangement was resorted to Austin phoned from Johannesburg informing the appellant that Kallex had dispatched some electrical spares to the Windhoek postal address. Austin added that someone was on the way from Johannesburg to Windhoek to pick up the spares. This person in due course telephoned

from the Inter Cape Main Liner coach station in Windhoek announcing his arrival and asking the appellant to go and pick him up. The appellant travelled by taxi to the coach station and later returned home accompanied by the new arrival from Johannesburg who turned out to be Stephen Shakatimba, another Nigerian. The appellant had earlier collected two parcels of the postal material which had been mentioned by Austin. The parcels were packed in plastic containers which looked like carrier bags. The parcels were handed to Shakatimba who shortly afterwards left for South Africa.

About two months later Austin once again telephoned the appellant and said that more postal materials were on the way from Kallex in Brazil and that he (Austin) was again going to send someone from Johannesburg to collect from Windhoek. These materials were also said to be electrical or electronic spares. As on the previous occasion, Stephen Shakatimba came to Windhoek and stayed for a few days before the parcels arrived. He also enjoyed free hospitality. The advice slip for the arrival of the postal material was received and the appellant's mother signed it. The appellant's elder sister, Mrs. Vries, brought three parcels from the post office. These were similarly packed like the earlier two. The appellant handed them to Stephen Shakatimba.

At no time did the appellant enquire about, nor did he see or know what the contents of the parcels were. In his statement to the police the appellant stated, and while being cross-examined he acknowledged, that Stephen Shakatimba was secretive when handling the parcels while he was at the appellant's home. Even this did not arouse any suspicion about the contents of the parcels. He described each of the parcels as being about 60 cm x 45 to 50 cm in size, they were neither heavy nor light, " but in between," he said.

The foregoing paragraphs constitute the scenario painted by the appellant in his evidence.

Evaluation of the Evidence

In all his dealings with his Nigerian guests the appellant and his family are said to have played host to them for absolutely no recompense by them, save that at one time after the appellant had been arrested and put in custody pending trial on the current charge Austin remitted N$1,000 to the appellant's mother so that the appellant could be bailed out of custody.

When the appellant was in the remand prison he once again met Stephen Shakatimba who had earlier been arrested for the present

offence and was in the same prison. In this connection the appellant was asked under cross-examination whether he remonstrated with Stephen Shakatimba for having put him into trouble by involving him in cocaine trafficking when the appellant did not know what was happening. His only answer was that he spoke to another remandee, one Polikarp, whom he asked why "the guys," meaning Stephen Shakatimba and the other Nigerians involved in the said triangular cocaine trafficking, did not tell him that they were doing business in cocaine.

The appellant also narrated under cross-examination how at one time while he was on bail pending trial for the current offence he acted as an envoy for Stephen Shakatimba. The latter had asked him to contact one, Chris, a brother of Stephen Shakatimba or Smallboy in Johannesburg and asked him to arrange for a lawyer to represent Stephen Shakatimba in the impending trial. The appellant obliged but when he phoned Johannesburg he was told that Chris had moved and his whereabouts were unknown. In this connection the appellant said he made two or three telephone calls to Johannesburg.

The *mens rea* alleged against the appellant was that of dealing in cocaine "unlawfully and intentionally". Intention connotes knowledge, and therefore the allegation is that he knowingly engaged in the

unlawful traffic in cocaine. The question which poses itself therefore is whether the prosecution proved beyond reasonable doubt that the appellant acted with such *mens rea* in interacting with the Nigerians. In other words did the appellant have guilty knowledge?

The appellant would have the court believe that he acted innocently, but did he? It is a normal human instinct that when one comes into contact with complete strangers, and especially when such contact is fortuitous, one details with them cautiously for quite some time before becoming free with them. This is especially so when the strangers are foreigners whose purpose for visiting one's country is unknown as was the case when the appellant supposedly met Kallex at the hair salon. It is even more unlikely for one to be accommodative if such foreigner does not indicate for how long he wishes to be hosted. To the contrary, in the present case the appellant says that when he met Kallex Gineto casually at the hair salon he instantly had pity for him because of the unproved allegation which this Nigerian made of the gayish conduct of his host, the salon owner. The appellant there and then took Kallex into his mother's home though his mother was herself a woman of low financial means. He kept Kallex for one month, feeding and accommodating him free of charge. He even caused Kallex to be given financial assistance to purchase a ticket for his return to Johannesburg. As if that was not enough, when Kallex returned to Windhoek in the

company of another Nigerian, Austin alias Smallboy or just Small or Kenneth Augustine, the appellant still hosted the two of them free of charge. Stephen Shakatimba, the courier, was apparently also gratuitously hosted by the appellant's family. While these strangers were still newly acquired friends, as he called them, the appellant readily agreed to use his mother's postal address to receive their mail from South America. The flimsy and unconvincing reason for the user of the postal box in that way was that Austin, the intended recipient of the mail, did not have a permanent address in Johannesburg. Despite being a penniless, unemployed person, the appellant unstintingly spent his precious money in traveling by taxi to the terminal each time his stranger friend phoned announcing his arrival from South Africa. On three occasions when he was on bail he spent money in telephoning South Africa to arrange for a lawyer for Stephen Shakatimba. Yet that very Stephen Shakatimba was one of the stranger friends who caused him to be arrested for peddling in cocaine and he never showed any rancour against him when they met in the remand prison. Moreover at the time when he should have been bitter with Stephen Shakatimba for putting him into trouble, the appellant readily became Stephen Shakatimba's envoy in trying to arrange for Stephen Shakatimba's legal representation.

The appellant further let these stranger Nigerian friends to gratuitously use his mother's postal box even though he knew that the supposed electrical/electronic spares which were to pass through that postal box were for sale in South Africa. In other words the appellant was prepared to let these strangers do business at his month's expense. Lastly but not least, Stephen Shakatimba, to the appellant's knowledge, was secretive in handling the parcels that came through his mother's postal box, yet he would have the court believe that this behaviour on the part of Shakatimba did not rouse any suspicions as to what those people who had surrounded him were up to.

The foregoing concatenation of circumstances militate against the notion exposed by the appellant's counsel, and indeed by the appellant himself, that the appellant acted innocently in this affair. They are circumstances which, in my considered opinion, take this case out of the realm of conjecture to one of reality as to the appellant's guilty knowledge when he was interacting with the Nigerians. In other words the inference that the appellant knew or must have known that he was giving succour to Nigerian cocaine dealers or that even if he did not have actual knowledge to that effect, he had constructive knowledge, is the only one reasonably possible to be drawn, to the exclusion of all other inferences. In the event, notwithstanding that I have held that the learned trial judge misdirected himself on certain

aspects as to the facts and law in this case, I feel that no miscarriage of justice has been occasioned. I would therefore dismiss the appeal against conviction.

Appeal against Sentence

As regard the sentence I have carefully considered all the valid submissions made on behalf of the appellant. I have also carefully considered the reasoning of the lower court as to why a sentence of 10 years imprisonment was called for in this case. I have found that the trial judge balanced circumstances which mitigate in favour of the appellant against those that militate against him.

I cannot stress more the point made by the sentencing judge that trafficking in cocaine attracts condemnation worldwide because of its deleterious effect on the physical and mental health of those who abuse it. This offence therefore calls for a deterrent sentence to be imposed on those who facilitate its abuse, the traffickers. Moreover under section 2(a) of the Abuse of Dependence Producing Substances and Rehabilitation Centre Act, Number 41 of 1971, the offence of dealing in dependence producing drugs attracts a maximum fine of ZAR30,000 which is equal to N$30,000, or a custodial sentence of 15 years imprisonment or both such fine and imprisonment. In the

present case a sentence of 10 years imprisonment was imposed. This sentence does not come to me with a sense of shock as being excessive nor do I find it as having been based on wrong principles. I would endorse it and consequently dismiss the appeal against sentence as well.

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CHOMBA, A.J.A.

I agree

_____
STRYDOM, C.J.

I agree

_____
MANYARARA, A.J.A.

For the Appellant : Mr. G. Barnard

On behalf of : H. Barnard and Partners

For the Respondent : Ms. C. Barnard

On behalf of : Prosecutor-General