

SOUTH AFRICA / JUDGMENT

Matame v S (CA&R129/2016) [2017] ZAECHGC 38 (31 March 2017)

[2017] ZAECHGC 38**COURT**

Eastern Cape High Court, Grahamstown

BEFORE

S M Mbenenge, S Tilana-Mabece

CASE / FILE NUMBER

CA&R129/2016

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****(EASTERN****CAPE DIVISION, GRAHAMSTOWN)****CA&R****129/2016****In**

the matter between:

MOTSOKO
THOMAS
MATAME
Appellant
and
THE
STATE
Respondent**JUDGMENT****MBENENGE J:**

- [1] The appellant pleaded guilty to and was convicted of dealing in 77.1kg of dagga[1] for which he was sentenced to undergo seven years' imprisonment. He now appeals with the leave of this court against the sentence.

- [2] The facts on the strength of which the appellant was convicted are very brief. The appellant bought the dagga at Lusikisiki and intended selling it in or around Jeffreys Bay. On the day in question[2] he got to a check point manned by members of the South African Police Service in Jeffreys Bay. Upon being searched, the dagga was found in and seized from the appellant's possession.
- [3] At the time of being sentenced, the appellant was 37 years old; he has an unrelated previous conviction;[3] he had been employed by a building construction company and is single but has three offspring who look to him for sustenance.
- [4] At the time the appeal was instituted the magistrate who imposed sentence was no longer available. There was therefore a drought of information regarding the motivation for the imposition of the sentence now subject to the appeal.
- [5] The issue for determination in this appeal is whether the sentence is severe that interference therewith is justified, the test being whether the sentence imposed is just in the circumstances of the case.[4]
- [6] It is trite law that the process of sentencing offenders is, in general, not a mechanical one and that sentences have to be individualised.[5] Also, sentences for dealing in dagga cannot be graduated mathematically according to the quantity of dagga involved.[6]
- [7] In *S v Nkombini*,[7] dealing with a much more lenient penal section of the legislation then in operation in the former Transkei, White J held that when the quantity of dagga exceeds 10kg the judicial officer should, as a starting point, consider imprisonment without the option of a fine[8] and that the starting point for sentencing a first offender convicted of dealing in a large quantity of dagga should be a sentence of five to seven years' imprisonment.[9] The *Nkombini* case has been cited with approval as providing useful guidelines in the sentencing of drug dealers in a long line of decided cases.
- [8] At the same time a sentence imposed by a trial court may be proportionate or disproportionate viewed against similar cases in a particular Division and in other Divisions. [10] I intend considering only cases with similar circumstances.
- [9] The appellant in *S v Lutshutu*,[11] a 48 year old first offender had pleaded guilty to dealing in dagga (145.89kg). He earned about R100.00 per week, doing odd jobs. After considering similar cases, Plasket J (on appeal) reduced the sentence to six years' imprisonment.
- [10] *S v Caleni*[12] a 44 year old unemployed second offender paid R1 000.00 for conveying an unknown amount of dagga whose sentence was on appeal reduced to seven years' imprisonment.

- [11] The appellant in *S v Dyompana*[13] had three relevant previous convictions and pleaded guilty to dealing in 61.2kg of dagga. The appeal court confirmed a sentence of six years' imprisonment.
- [12] Finally, *S v Hlongwane*[14] concerns a 35 year old first offender whose sentence of four years' imprisonment of which two years were conditionally suspended for dealing in 148.25kg of dagga was confirmed on appeal.
- [13] It will be observed that in each one of the cases referred to above the quantity of dagga involved was substantially more than the quantity that we are about in this matter. The comparison does in my view reveal that the sentence under consideration was inappropriate, to the extent that a portion of the imprisonment sentence imposed ought to have been suspended conditionally. I should add that the magistrate did not give due regard to the appellant being a first offender.
- [14] I therefore find it necessary to interfere with the sentence, to the extent mentioned above. The sentence of six years'

imprisonment is set aside, and in its place the following is imposed:

"Six years' imprisonment, two years of which are suspended for five years on condition that the accused is not found guilty of a contravention of section 5(a) or 5(b) of the Drugs and Drug Trafficking Act, 140 of 1992 committed during the period of suspension."

S M MBENENGE

JUDGE OF THE HIGH COURT

I agree

S TILANA-MABECE

ACTING JUDGE OF THE HIGH COURT

Counsel for the Appellant

: D P Geldenhuys

Instructed by

: The Grahamstown Justice Centre

Counsel for the First Respondent : S Hendricks

Instructed by :

The Office of the DPP

Grahamstown

Date heard

: 22 March 2017

Judgment

delivered :

31 March 2017

- [1] In contravention of section 5(b) of the Drugs and Drug Trafficking Act 140 of 1992.
- [2] 27 January 2014.
- [3] A vehicle on a public road driven at a speed higher than the general speed limit that applies to that road.
- [4] See *S v Shapiro* 1994 (1) SACR 112 (A) at 119 j – 120 c (cited with approval in *S v Sadler* 2000 (1) SACR 331 (SCA) at 334 f – g) where it was held: “[6] The approach to be adopted in an appeal such as this is reflected in the following passage in the judgment of Nicholas AJA in *S v Shapiro* 1994 (1) SACR 112 (A) at 119j – 120c: ‘It may well be that this Court would have imposed on the accused a heavier sentence than that imposed by the trial Judge. But even if that be assumed to be the fact, that would not in itself justify interference with the sentence. The principle is clear: it is encapsulated in the statement by Holmes JA in *S v Rabie* 1975 SA 855 (A) at 857 D-G: “1. In every appeal against sentence, whether imposed by a magistrate or a Judge, the Court hearing the appeal- (a) Should be guided by the principle that punishment is ‘pre-eminently a matter for the discretion of the trial Court’; and (b) Should be careful not to erode such discretion: hence the further principle that the sentence should only be altered if the discretion has not been ‘judicially and properly exercised’. 2. The test under (b) is whether the sentence is vitiated by irregularity or misdirection or is disturbingly inappropriate.”’
- [4] See *S v Shapiro* 1994 (1) SACR 112 (A) at 119 j – 120 c (cited with approval in *S v Sadler* 2000 (1) SACR 331 (SCA) at 334 f – g) where it was held:

“[6] The approach to be adopted in an appeal such as this is reflected in the following passage in the judgment of Nicholas AJA in S v Shapiro 1994 (1) SACR 112 (A) at 119j – 120c:

‘It may well be that this Court would have imposed on the accused a heavier sentence than that imposed by the trial Judge. But even if that be assumed to be the fact, that would not in itself justify interference with the sentence. The principle is clear: it is encapsulated in the statement by Holmes JA in S v Rabie 1975

- (4) SA 855 (A) at 857 D-G:

“1. In every appeal against sentence, whether imposed by a magistrate or a Judge, the Court hearing the appeal-

- (a) Should be guided by the principle that punishment is ‘pre-eminently a matter for the discretion of the trial Court’; and
 - (b) Should be careful not to erode such discretion: hence the further principle that the sentence should only be altered if the discretion has not been ‘judicially and properly exercised’.
2. The test under (b) is whether the sentence is vitiated by irregularity or misdirection or is disturbingly inappropriate”.”

[5] S v Lutshutu 2001

(1) SACR 643 (ECD) at 645 j.

[6] R v Mojafe and Others 1955

(2) SA 262 (T) at 264A; S v Mjezu 1978

(1) SA 319 (E); and S v Nkombini 1990 (2) SACR 465 (Tk) at 469 c – d.

[7] Supra.

[8] Supra 469 g.

[9] Supra 469 i.

[10] Lutshutu (supra) at 646 a.

[11] Supra.

[12] 1990

(1) SACR 178 (C).

[13] 1996

(1) SACR 564 (E).

[14] 1998

(1) SACR 221 (O).

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Prepared on 12 October 2026 · Esheria