

SOUTH AFRICA / JUDGMENT

Motseki v S (97/2015) [2015] ZAFSHC 140 (11 June 2015)

[2015] ZAFSHC 140**COURT**

Free State High Court, Bloemfontein

BEFORE

C. REINDERS, C. VAN ZYL

CASE / FILE NUMBER

97/2015

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Source record**FREE STATE HIGH COURT, BLOEMFONTEIN****REPUBLIC****OF SOUTH AFRICA****Special Review Number: 97/2015****In the review between:**

M MOTSEKI

and

THE STATE

Appellant

Respondent

CORAM:

VAN ZYL, J et REINDERS, AJ

JUDGMENT**BY: REINDERS, AJ****DELIVERED ON: 11 JUNE 2015**

[1] This matter has been sent on special review in terms of Section 304(4) of the Criminal Procedure Act, 51 of 1977, from the Welkom Magistrate's Court.

[2] Mr SF Ferreira, Senior Magistrate (Welkom) in a letter attached to the special review, briefly set out the following summary of the relevant circumstances and facts:

“The accused was charged with contravening section 49(1)(a) of Act 13 of 2002- Illegal Foreigner.

The accused person was legally represented.

The accused was sentenced to a Fine of R 1000 or 3 months imprisonment.

In terms of section 103 (2) of Act 60 of 2000 the accused was declared unfit to possess a firearm.

The clerk of court had also informed the Registrar of the Firearms Registry Centre of the magistrates order declaring the accused unfit to possess a firearm.

It is respectfully submitted that the provisions of section 103 of the Firearms Control Act, Act 60 of 2000 is not applicable in this instance. Section 103(1)(a) – 103(1)(o) as well as section 103(2) with reference to Schedule 2 does not warrant an enquiry into the competency of a person to possess a firearm.

Therefore the order must be declared ultra vires.

The magistrate was requested to comment of the writers view but declined to do so.”

[3] Having read the record of the transcriptions together with the supporting documentation attached thereto, I am in agreement with Mr Ferreira’s view that the presiding magistrate acted ultra vires in declaring the accused unfit to possess a firearm in terms of section 103(2) of the Firearms Control Act, 60 of 2000. The offence of which the accused had been found guilty is not an offence/crime referred to in Schedule 2, and therefore it follows that the offence falls without the scope and ambit of declaring the accused unfit to possess a firearm.

[4] Consequently the following order is made:

4.1 The conviction and sentence are confirmed.

4.2 The declaration in terms of Section 103(2) of the Firearms Control Act, 60 of 2000, is set aside.

4.3 The Senior Administration Officer (Magistrate Court: Welkom) is ordered to forthwith inform the Registrar: Firearms Registry Centre (Pretoria) of the order in terms of paragraph 4.2 above.

C. REINDERS, AJ

I concur:

C. VAN ZYL, J

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Prepared on 9 October 2026 · Esheria