

SOUTH AFRICA / JUDGMENT

Nokele v S (CA&R 312/2009)

[2010] ZAECGHC 37 (24 May 2010)

[2010] ZAECGHC 37

COURT

Eastern Cape High Court, Grahamstown

BEFORE

N Dambuza, M Makaula

CASE / FILE NUMBER

CA&R 312/2009

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IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE – GRAHAMSTOWN)

Case No.: CA&R 312/2009 Date heard: 19 May 2010 Date delivered: 24 May 2010 In the matter between: NTOMBIZANELE NOKELE Appellant and THE STATE Respondent

J U D G M E N T

DAMBUZA, J:

The appellant was convicted by the magistrate East London of the offence of dealing in dagga. She was then sentenced to 24 months imprisonment. She now appeals, with leave of the court a quo, against both the conviction and sentence.

The charge which the appellant was facing is unclear from the record. According to the charge sheet she was charged with “poss. of dagga”, presumably “possession of dagga”. The charge sheet then refers to Annexure “A” thereof. Annexure “A” reveals that the appellant was charged with unlawfully dealing in 5,3 kg of dagga in contravention of section 5(b) read with sections 1, 13f, 17e, 18,19, 24 and Parts II and III of the drug and Drug Trafficking Act , Act No 140 of 1992. On the annexure the appellant was charged in the alternative, with possession of the dagga in contravention of section 4b (read with the abovementioned subsections).

The record reveals that the appellant, who was at the time, unrepresented, pleaded guilty to both the main and the alternative charge.

It has been submitted by both counsel for the state and the appellant, and I agree that the appellant may have been confused at the time of the proceedings as to the exact charge she was facing. The magistrate concedes in his judgment on the application for leave to appeal that because the meaning of “dealing” in dagga was not explained to the appellant, it is possible that she thought that she was pleading guilty to possession of the dagga.

According to the record the magistrate questioned the appellant in terms of section 112(1)(b) of the CPA as ff:

“Q: ...on 28/08/ 2009 at Mooiplaas were you in the possession of dagga?”

A: Yes about 5 kg it was in a suitcase

Q: What were you doing with it?

A: I was in a motor vehicle conveyed the dagga from Mooiplaas to Mdantsane to my aunt at Mdantsane. I don’t know what she was going to do with it.....”

It does appear that in the absence of an explanation by the magistrate of the meaning of “dealing” in dagga as set out in section 1 of the Drugs and Drug Trafficking Act, the appellant probably did not appreciate that she was in fact pleading guilty to the more serious offence of dealing in dagga. But a more fundamental irregularity is the confusion, in the charge sheet and the annexure thereto, as to the exact charge with which the state intended to charge the appellant. The appellant, in all probability, did not know what charge she was pleading to.

I agree with the submissions by Mr Wessels on behalf of the appellant that the proceedings fall to be set aside, inclusive of the conviction and sentence. It is therefore

unnecessary to consider the merits of the appeal.

Consequently:

The conviction and sentence are set aside.

N. DAMBUZA

JUDGE OF THE HIGH COURT

MAKAULA, AJ:

I agree.

M. MAKALA

JUDGE OF THE HIGH COURT (ACTING)

Appearances:

For the appellant: Adv. J.W. Wessels instructed by Wheeldon Rushmere & Cole

For the respondent: Adv. D. Els instructed by the Director of Public Prosecutions

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