

SOUTH AFRICA / JUDGMENT

S v Bolani (CA&R307/2019) [2019] ZAE CGHC 120 (28 November 2019)

[2019] ZAE CGHC 120

COURT

Eastern Cape High Court, Grahamstown

BEFORE

G H Bloem, N G Beshe

CASE / FILE NUMBER

CA&R307/2019

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION, GRAHAMSTOWN

CA & R: 307/2019

REVIEW NO. 20190150

In the matter between:

THE STATE

and

LIHLE BOLANI

Accused

REVIEW JUDGMENT

Bloem, J

[1] The accused, who was legally represented, was correctly convicted by the magistrate at East London of malicious injury to property after he had pleaded guilty to that offence. On 4 June 2019 he was sentenced to pay a fine of R8 000.00 or to undergo 6 months' imprisonment. The operation of the whole sentence was suspended for a period of 5 years on condition:

1.1. that he not be convicted of malicious injury to property committed during the period of suspension; and

1.2. that he shall "attend compulsory completion of the anger management program run by NICRO from 24 June 2019 to 23 July 2019 at 18 Muller Street, Southernwood."

[2] The second condition of the suspension of the sentence was based on a report dated 5 June 2019 prepared by Mrs Gcobisa Ntaka and Dr Emmison Muleya, a social worker and social work supervisor respectively. Both of them are attached to the NICRO offices at 19 Muller Street, Southernwood, East London. In that report it was suggested that

the accused receive a non-custodial sentence on condition that he underwent the completion of an anger management program for a minimum of 10 group sessions.

[3] The matter came before me on special review. The magistrate pointed out that the order specified neither the person at NICRO to whom the accused should report nor the address where and the time when he should report. According to the above report NICRO's offices are at 19 Muller Street, Southernwood, East London (the correct address). The magistrate should accordingly have ordered that the accused should report at NICRO at 19 Muller Street, Southernwood, East London.

[4] Section 297 of the Criminal Procedure Act[1] provides for the conditional or unconditional postponement or suspension of sentence, and caution or reprimand. Section

297 (8A)(a) reads as follows:

“(8A)(a) A court which under this section has imposed a condition according to which the person concerned is required to perform community service, to undergo instruction or treatment or to attend or reside at a specified centre for a specified purpose, shall cause to be served upon the person concerned a notice in writing directing him to report on a date and time specified in the notice or (if prevented from doing so by circumstances beyond his control) as soon as practicable thereafter, to the person specified in that notice, whether within or outside the area of jurisdiction of the court, in order to perform that community service, to undergo that instruction or treatment or to attend that centre or to reside thereat, as the case may be.” (own underlining)

[5] It is unclear whether the magistrate caused a written notice, as envisaged in the subrule, to be served on the accused. Although the second condition imposed on the accused mentions the date on which the accused should have reported at NICRO, it did not:

5.1. specify the time when he should have reported on that day; and

5.2. the person at NICRO to whom he should have reported (“the person specified in that notice”).

[6] The second condition of suspension imposed on the accused accordingly did not comply with the provisions of section 297 (8A)(a) in the regards set out above. The sentence imposed on the accused must accordingly be set aside and the matter remitted to the magistrate to impose sentence afresh in the light of this judgment.[2]

[7] In the result, it is ordered that:

7.1. The conviction is confirmed.

7.2. The sentence imposed by the magistrate is set aside.

7.3. The matter is remitted to the magistrate to impose sentence on the accused afresh.

G H BLOEM

Judge of the High Court

Beshe, J

I agree

N G BESHE

Delivered on 28 November 2019.

[1] Criminal Procedure Act, 1977 (Act No. 51 of 1977).

[2] S v Mpesheni

[2010] JOL 24893 (ECG).

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Prepared on 12 October 2026 · Esheria