

SOUTH AFRICA / JUDGMENT

S v Botha (135/2015(b)) [2015] ZAFSHC 194 (29 October 2015) [2015] ZAFSHC 194

COURT

Free State High Court, Bloemfontein

BEFORE

M Opperman, C Van Zyl

CASE / FILE NUMBER

135/2015(b)

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FREE

STATE HIGH

COURT, BLOEMFONTEIN

REPUBLIC

OF

SOUTH AFRICA

Review No. : 135/2015(b)

In the

matter between:-

THE

STATE

and

HERMAN ABRAM BOTHA

CORAM:

VAN

ZYL, J et

OPPERMAN,

AJ

JUDGMENT

BY: OPPERMAN, AJ

DELIVERED ON: 29 OCTOBER 2015

JUDGMENT

- [1] The accused was convicted of the contravention of section 57(1) of the National Environmental Management Biodiversity Act 10 of 2004 after proper application by the magistrate of section 112(1)(b) of the Criminal Procedure Act 51 of 1977.
- [2] The matter was referred for review in terms of section 302 of the Criminal Procedure Act 51 of 1977.
- [3] Reflected in the transcribed record as well as Annexure A of the original record the following sentence was imposed:

“Beboet met R250 000-00 (Twee honderd en vyftig duisend) of 1 (een) jaar gevangenisstraf. Dit word gelas dat bogenoemde boetevonnis en termyn van gevangenisstraf in die geheel opgeskort word vir ‘n periode van 5(vyf) jaar op die onderstaande voorwaarde.

Opskortingsvoorwaardes: dat die beskuldigde nie skuldig bevind word aan die oortreding van artikel 57(1) van die National Environmental Management Biodiversity Act 10 of 2004. Uitvoer van ‘n beperkte handeling ten opsigte van ‘n bedreigde, beskermde dier/spesie sonder voorgeskrewe permit.”

- [4] Confusion was caused by an erroneous depiction of the sentence on the so-called J4 or cover document prescribed in the administration of review cases. The flawed reproduction of the sentence reads:

“Fined with R250 000-00 (Two hundred and fifty thousand rands) or 1(one) year imprisonment. It is ordered that such term of imprisonment be wholly suspended for a period of 5(five) years on condition the accused is not convicted of the Contravention of section 57(1) of the National Environmental Management Biodiversity Act 10/04 – performing of a restricted activity involving threatened or protected species without a permit.” (My accentuation)

- [5] The difference, material and relevant, caused Mokoena AJ to request reasons from the magistrate on the erroneous version of the sentence. The magistrate, also not recognising the confusion, set about giving comprehensive reasons for sentence.
- [6] Section 303 of the Criminal Procedure Act 51 of 1977 explicitly prescribes: ‘a copy thereof certified by such clerk’. It is apposite to caution that magistrates must ensure

the correctness of records and communication with superior courts at all times. The typed record was not certified by the clerk of the court and the annexure to the charge sheet, for instance, reflects the accused to be only Mr. Tobie Bird; this is not a true reflection of the original record and the transcript of the digital recordings.

[7] The above said; I am satisfied that the proceedings in this case are in accordance with justice. However the formulation of the sentence must be corrected.

[8] The following order is consequently that:

1. The conviction and sentence are confirmed.
2. The formulation of the sentence is amended to read:

“The accused is fined to R250 000-00 (Two hundred and fifty thousand rands) or 1(one) year imprisonment which is wholly suspended for 5(five) years on condition the accused is not again convicted of the contravention of section 57(1) of the National Environmental Management Biodiversity Act 10 of 2004 and which was committed within the period of suspension.”

M. OPPERMAN, AJ

I concur.

C. VAN ZYL, J

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Prepared on 10 October 2026 · Esheria