

SOUTH AFRICA / JUDGMENT

S v Dube (89/15) [2015] ZAFSHC 136 (4 June 2015) [2015] ZAFSHC 136

COURT

Free State High Court, Bloemfontein

BEFORE

S Naidoo, JP Daffue

CASE / FILE NUMBER

89/15

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IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Review No: 89/15

In the review between:

THE STATE

versus

Agripa Dube

ACCUSED

CORAM:

DAFFUE J et NAIDOO, J

JUDGMENT:

NAIDOO, J

DELIVERED ON: 4 JUNE 2015

REVIEW JUDGMENT

[1] This is a Special Review that came before us in terms of section 304(4) of the Criminal Procedure Act 51 of 1977 (the Act).

[2] The accused, to whom this review relates, is accused 2 and another person (accused

1) were charged with one count of contravening the provisions of section 1(1)(a) read with sections

(1)(1A), 1(2) and 2 of the Trespass Act 6 of 1959, in that they were found to be unlawfully at level 47 of Eland Shaft, a mine in the Welkom area, and one count of contravening section 49(1)(a) read with other relevant sections of the Immigration Act 13 of 2000, in that they entered and remained in the Republic of South Africa without valid travel documents. Accused 1 had absconded and the matter proceeded only in respect of accused

2. I shall therefore refer to accused 2 as "the accused". The accused was legally represented and pleaded guilty to both counts on 2 April 2015. He was convicted accordingly and sentenced as follows:

"Count 1 - The accused is fined to R4000 Rand or Twenty Four (24) months' imprisonment. Plus a further Twelve Months imprisonment which is suspended for Five Years on condition that the accused is not convicted of trespassing on a mine premises during period of suspension.

Count 2 - The accused is fined to a R1000-00 or Thirty Days Imprisonment"

[3] Section 1(2) of the Trespass Act prescribes the penalty for a contravention of section 1, in terms of which the accused was convicted, and provides as follows:

"Any person convicted of an offence under section 1 shall be liable to a fine not exceeding R2000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment"

As a result of the above, the Senior Magistrate referred the matter to this court with the comment that the magistrate, in passing sentence in respect of count 1, exceeded the maximum of two years' imprisonment prescribed by the Trespass

Act and suggested that this court alter the sentence passed by the magistrate and substitute it as follows:

"Fined R4000 or 12 months imprisonment. In addition the accused is sentenced to a further 12 months imprisonment which is suspended for 5 years on condition that accused not be convicted of contravening section 1(1) of Act 6 of 1959 where trespassing is committed on a mine premises committed during the period of suspension"

[4] It would appear from the suggestion of the Senior Magistrate above that he/she overlooked that section 1(2) also prescribes a maximum fine of R2000.00. Therefore the imposition of a fine of R4000.00 would also fall foul of that subsection. The Senior Magistrate advises that the accused has already paid an amount of R5000.00 in respect of the fines imposed on him in respect of counts 1 and 2. In my view the magistrate must reconsider the sentence in respect of count 1 in the

light of the provisions of section 1(2) of the Trespass Act. The accused must also be refunded the amount he has already paid, prior to his sentence being re-considered

[7] I accordingly make the following order:

7.1 The conviction in respect of counts 1 and 2, and the sentence imposed in respect of count 2 are confirmed.

7.2 The matter is referred back to the Magistrate's Court for sentencing afresh on coocnccccocount 1

S. NAIDOO, J

I agree.

JP DAFFUE, J

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