

SOUTH AFRICA / JUDGMENT

S v Dyantye (CA&R327/16) [2016] ZAECHGC 132 (17 November 2016)

[2016] ZAECHGC 132**COURT**

Eastern Cape High Court, Grahamstown

BEFORE

S M Mbenenge, N Ntlama

CASE / FILE NUMBER

CA&R327/16

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****(EASTERN****CAPE DIVISION, GRAHAMSTOWN)****CA&R327/16****Date****Delivered: 17 November 2016****In****the matter between:**THE
STATE
and
SIMPHEWE
DYANTYE
Accused
REVIEW**JUDGMENT****MBENENGE J:**

- [1] The accused appeared before the Magistrate, Lady Grey charged with dealing in dagga in contravention of section 5(b) read with sections 1, 13, 17 to 20, 22 to 25 and 64 of the Drugs and Drug Trafficking Act 140 of 1992 (the Act). He pleaded guilty to the charge. It was alleged that on or about 9 July 2016 and at or near New Location, Lady Grey the accused unlawfully dealt in an undesirable dependence-producing substance as listed in Part III of Schedule 2 to the Act, to wit 0.376 grams + 0,104 grams (dagga).

- [2] Pursuant to the accused's plea of guilty which satisfied all the elements of the crime, the magistrate invoked section 112(1)(b) of the Criminal Procedure Act of 51 of 1977 and, upon questioning the accused, found him guilty of dealing in dagga.
- [3] The accused was sentenced to pay a fine of R3000.00 or in default thereof to undergo 18 months imprisonment. The dagga that was the subject of the proceedings was declared forfeited to the State.
- [4] When the matter served before Mabece AJ on review she raised the following query:

"Is the sanction competent having regard to the provisions of section 13 read with 17 (e) of the Drugs and Drug Trafficking Act 140 of 1992?"

- [5] The Magistrate has, in response to the query, conceded that when one has regard to section 13 read with 17(e) of the Act, the sanction is not competent. He has proposed the following sentence:

"To undergo 4 (four) years imprisonment which is wholly suspended for a period of three (3) years on condition that accused is not convicted of se 5(a)r/w sec 1, 13, 17 to 22 to 25 and 64 of Drug Trafficking Act 140/1992 committed during the period of suspension. In addition to pay a fine of R3000.00 (three thousand rands) or in default a payment to undergo 18 (eighteen) months imprisonment. Dagga is declared forfeited to the State."

- [6] In terms of section 17(e) of the Act a person, such as the accused was, who has been convicted of an offence referred to in section 13(f)[1] is liable to being sentenced to imprisonment for a period not exceeding 25 years, or to both such imprisonment and such fine as the court may deem fit to impose.
- [7] The concession made by the magistrate is correct, as indeed he imposed a sentence that does not accord well with section 13(f) read with 17(e) of the Act.
- [8] The sentence imposed by the magistrate on 04 August 2016 is hereby set aside and replaced with:

"1. To undergo 4 (four) years imprisonment, the whole of which is suspended for a period of three (3) years on condition that the accused is not convicted of a contravention of section 5(a) read with sections 1, 13, 17 to 20, 22 to 25 and 64 of the Drugs and Drug Trafficking Act 140 of 1992 committed during the period of suspension."

2. In addition the accused is sentenced to pay a fine of R3000.00 (three thousand rands) or in default of such payment to undergo 18 (eighteen) months imprisonment.
3. The dagga that is the subject of these proceedings declared forfeited to the State.
4. The sentence is ante-dated to 04 August 2016."

S M MBENENGE

JUDGE OF THE HIGH COURT

16 November 2016

I agree

N NTLAMA

ACTING JUDGE OF THE HIGH COURT

[1]

Contravention of section 5(b) of the Act i.e dealing in any dangerous dependence- producing substance or any undesirable dependence- producing substance e.g dagga

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