

SOUTH AFRICA / JUDGMENT

S v Koli (20160090) [2016] ZAE CGHC 91 (22 September 2016) [2016] ZAE CGHC 91

COURT

Eastern Cape High Court, Grahamstown

BEFORE

C. Plasket, J. D. Pickering

CASE / FILE NUMBER

20160090

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION, GRAHAMSTOWN

REVIEW CASE NO: 20160090

DATE DELIVERED: 22/9/16

NOT REPORTABLE

In the matter between:

THE STATE

and

MICHAEL XOLANI KOLI

REVIEW JUDGMENT

PLASKET J

[1] This is a special review. The matter has been referred to this court by magistrate Ms N P Mvumbi of the East London Magistrate's

Court.

[2] The accused was convicted by Ms Mvumbi of the offence of stock theft in terms of the Stock Theft Act 57 of 1959. He was sentenced to 24 months imprisonment of which six months imprisonment was suspended for five years 'on condition that the accused is not convicted of contravening section 1 of the Stock Theft Act 37 of 1959 committed during the period of suspension'.

[3] The magistrate referred the matter to this court when she realised that she had erred in referring to s 1 of the Stock Theft Act in the condition of the suspension of the sentence: the condition is meaningless because s 1 is the Act's definition section, doing no more than defining the terms 'Minister', 'produce', public sale', 'stock' and 'sufficient fence'.

[4] The magistrate intended to make the suspension conditional upon the accused not being convicted of stock theft that was committed during the period of suspension.

[5] The following order is therefore made:

(a) The sentence imposed on the accused is set aside.

(b) The accused is sentenced to 24 months imprisonment of which six months imprisonment is suspended for a period of five years on condition

that the accused is not convicted of theft in terms of the Stock Theft Act 57 of 1959 committed during the period of suspension.

(c) The sentence is back-dated to 18 July 2016.

C. PLASKET

JUDGE OF THE HIGH COURT

I agree:

J. D. PICKERING

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