

SOUTH AFRICA / JUDGMENT

S v Magwaza (14/11) [2011] ZANWHC 37 (26 August 2011)

[2011] ZANWHC 37

COURT

North West High Court, Mafikeng

BEFORE

A.M. Kgoele, R.D. Hendricks

CASE / FILE NUMBER

14/11

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NORTH

WEST HIGH COURT

HIGH

COURT REF: 14/11

In

the matter between:

THE
STATE
and
COUFRIED
MAGWAZA

REVIEW

JUDGMENT

KGOELE J.

[1] When this matter came on review I sent the following query to the presiding officer:-

“[1] According to J4 the accused was convicted of Dealing in Drugs (Main charge). According to J15 he was convicted of the Alternative charge Possession of dagga (alternative to the main charge).

Please rectify

[2] Does Section 112 (1) (a) of the CPA permit a court to sentence an accused on conviction to a fine of R2000-00?

2.1 My understanding is that Government Notice R239, Government Gazette 24393 of 14 February 2003 has not been repealed. The fine determined by the Minister in the said Gazette is R1500-00. Your comment will be appreciated.”

[2] The presiding officer reply was as follows:-

“Firstly writer apologizes for the delay in the reply to the query by the Honourable Judge.

Writer has been transferred to Rustenburg from Mogwase Magistrate’s Court and the query was received by Clerk of the Court at Mogwase and had to be sent to writer at Rustenburg.

The J4 error has been rectified and is hereby attached. Writer concedes that the sentence imposed herein is not in accordance with the provisions of Sec 112 (1) (a) of the Criminal Procedure Act.”

[3] It is trite law that a court can only convict an accused person in terms of section 112 (1) (a) of the Criminal Procedure Act (CPA) if the court is of the opinion that the offence concerned does not merit punishment of:-

imprisonment or other form of detention without the option of a fine

a fine exceeding the amount determined by the Minister in the Government Gazette, currently R1 500-00 [Government Notice R289, Government Gazette 24393 of 14th February 2003]

[4] Only relatively minor offences should be dealt with under section 112 (1)(a), see Aniseb 1991 (2) SACR 413 (Nm) where, at 415, the judge remarked as follows:-

“the policy behind s 112 (1) (a) is clear. The Legislature has provided machinery for the swift and expeditious disposal of minor criminal cases where an accused pleads guilty. The trial court is not obliged to satisfy itself that an offence was actually committed by the accused but accepts his plea at face value. The accused thus loses the protection afforded by the procedure envisaged in s 112 (1) (b), but he is not exposed to any really serious form of punishment”.

Further, at 416, he remarked as follows:

“Common assault can generally be classified as a minor offence, but it embraces a wide range of unlawful conduct. Before deciding whether to deal with an accused charged with common assault in terms of s 112 (1)(a), a trial court must have close regard to the particulars of the charge..”

Adding at 417:

“A decision to invoke s 112 (1)

(a) is a discretionary one. This discretion must be exercised judicially”.

[5] In Addabba; Ngema; Van Wyk 1992 (2) SACR 325 (T) Van Dijkhorst J remarked on the fact that numerous cases were being disposed of in terms of section 112 (1) (a) because of the then increase in the amount determined by the Minister from R300 to R1 500. He remarked further that the safety valve built into the system ensuring fair adjudication had become

defunct because the limit had been set too high. He added that where a magistrate was dealing with an undefended and unsophisticated accused and proposed imposing a sentence substantially in excess of the previous cut-off of R300, it was not only desirable but essential for the purposes of fair administration of justice that the magistrate nevertheless question the accused as if the matter were governed by section 112 (1) (b). He reiterated that section 112 (1) (a) must be used sparingly and only where it was certain that no injustice would result from its application. (My own emphasis)

- [6] He further added that the section is still intended for minor matters, as its predecessors always were, particularly and probably more so in our time under the constitutional dispensation requiring that the criterion for a just criminal trial is “a concept of substantive fairness which is not to be equated with what might have passed muster in our criminal courts before the Constitution came into force”, (Zuma [1995] ZACC 1; 1995 (2) SA 642 (CC)).
- [7] Besides the concession made by the presiding officer in regard to the fine imposed, I am also of the view that possession of a dependence producing substance (dagga) of 1, 050 kg cannot be classified as a petty or trivial offence. The presiding officer ought to have resorted to using Section 112 (1) (b) of the CPA procedure in this regard.
- [8] Under the circumstances I come to the conclusion that the conviction of the accused and the sentence imposed should be interfered with.
- [9] Consequently the following order is made:-

8.1 The conviction and sentence of the accused is hereby set aside.

8.2 The matter is referred back to the magistrate office: Mankwe to start de novo before another presiding officer different from the one that presided in this matter.

A.M. KGOELE

JUDGE OF THE HIGH COURT

I agree

R.D. HENDRICKS

DATED: 26/08/2011

A.M. KGOELE

JUDGE OF THE HIGH COURT

DATED: 10/03/2011

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