

SOUTH AFRICA / JUDGMENT

S v Mahlomola (716/2011) [2011] ZAFSHC 171 (3 November 2011) [2011] ZAFSHC 171

COURT

Free State High Court, Bloemfontein

BEFORE

Jordaan, Zietsman

CASE / FILE NUMBER

716/2011

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FREE STATE HIGH COURT, BLOEMFONTEIN

REPUBLIC OF SOUTH AFRICA

Review No. : 716/2011

In the review between:-

THE STATE

versus

MONERI JOHANNES MAHLOMOLA

CORAM: JORDAAN, J et ZIETSMAN, AJ

JUDGMENT

BY: JORDAAN, J

DELIVERED ON: 3 NOVEMBER 2011

- [1] The accused pleaded guilty to and was accordingly found guilty of contravention of section 5(b) of Act 140/1992 (dealing in dagga) to the weight of 23,4 kg. He was sentenced to a fine of R12 000,00 or alternatively 24 (twenty four months) imprisonment with a further sentence of 12 (twelve months) imprisonment conditionally suspended for a period of 5 (five) years.
- [2] The accused was a Lesotho citizen aged 37 and stated in mitigation that he earned a salary of R1 800,00 per month, is married and has two children aged 7 and 4 respectively. He also helps maintaining other members of his family. According to the evidence he had no other monies or assets to sell so as to pay a substantial fine.

- [3] The learned magistrate was requested to give reasons for imposing the said sentence especially in view of the fact that it is obvious that the accused was not in a position to pay a fine of that magnitude. In answer the learned magistrate repeated that the sentence is, according to him, appropriate in view of the amount of dagga concerned, the serious nature of the offence and the prevalence of the offence in the district.
- [4] It appears that the accused was a first offender, pleaded guilty and did not waste the court's time. The amount of dagga concerned is quite a large amount being 23,4 kg and it goes without saying that the offence is serious in nature.
- [5] Although the ability of an accused to pay a certain fine is not of paramount importance, due regard should be given to that in assessing a proper sentence as far as a fine is concerned. It is not inappropriate to impose a fine that appears to be out of reach of the accused's financial resources but, notwithstanding that, I am of the view that the sentence imposed in this matter is so shockingly inappropriate in the circumstances of the case that interference with the sentence is justified. Although a hefty fine is still appropriate and although it might be that the accused will not be in the position to pay such fine from own resources, it might be that he will be able to do that with the help of family or friends or other resources.
- [6] It needs to be mentioned that, the accused being a Lesotho citizen and employed in Lesotho, a deferred fine was not regarded as appropriate, and rightly so.
- [7] I am of the view that in the circumstances of this matter the imposed sentence, being shockingly inappropriate, should be set aside and substituted with an appropriate sentence.
- [8] In the result:
1. The conviction is confirmed.
 2. The sentence is set aside and substituted with a sentence of R6 000,00 or 12 (twelve) months imprisonment. In addition the accused is sentenced to a further 12 (twelve) months imprisonment wholly suspended for 5 (five) years on condition that the accused is not again convicted of contravening section 5(b) of Act 140/1992 committed during the period of suspension.
 3. The sentence is to be regarded as having been imposed on 5 May 2011.

A.F. JORDAAN, J

I agree.

P. ZIETSMAN, AJ

/sp

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