

SOUTH AFRICA / JUDGMENT

S v Makhetha (R16/2020) [2020] ZAFSHC 94; 2020 (2) SACR 410 (FB) (14 May 2020)

[2020] ZAFSHC 94

COURT

Free State High Court, Bloemfontein

BEFORE

N.M. MBHELE, P.E. MOLITSOANE

CASE / FILE NUMBER

R16/2020

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IN THE HIGH COURT

OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Review

No: R16/2020

THE

STATE

and

KHUTLANE

MAKHETHA

CORAM:

MBHELE, ADJP et MOLITSOANE,J

JUDGEMENT

BY: MBHELE, ADJP

DELIVERED ON: 14 MAY 2020

1. This matter was laid before this court on special review at the instance of the Senior Magistrate, Welkom after conducting routine systemic check.
2. The 4 accused who were legally represented pleaded guilty to Contravention of Section 49(1) (a) of the Immigration Act no 13 of 2002.

3. Upon conviction, accused 1 was sentenced to R2000.00 or 60 days imprisonment, half of which is suspended on condition the accused is not convicted of Contravening the Immigration Act 13 of 2002.
4. The Senior Magistrate queries the sentence on the basis that the condition imposed is too wide. I agree with the observation

made by the Senior Magistrate.

5. In the matter of R v Cloete 1950 (4) SA 191 (O) the following was said when the court dealt with requirements for suspensive conditions:

“While the words of sec. 360 (b) of Act 31 of 1917 are wide and the discretion of the judicial officer should not be lightly interfered with, it does seem that two principles at least should be observed in the imposition of the conditions. The first is that the condition imposed should bear at least some relationship to the circumstances of the crime which is being punished by the imposition of the suspended sentence. It need not be closely related but should be related to it in some degree at least, even though slightly related, and not divorced from it, or remote from it. The second is that the condition be stated with such precision that the convicted person may understand the ambit of the condition.”

6. I agree with the above dictum. Any condition imposed must be closely related to the crime and that it should be stated with so much precision that it does not leave doubt in the mind of the accused as to which conduct is prohibited during the period of suspension. If the condition is too wide and not precise it confuses and poses challenges for the court that may have to consider the alleged

violation of the condition imposed.

7. The other relevant factor to consider is reasonableness. The conditions should be devised in such a manner that they do not subject the accused to future unfairness. They should not be too onerous, compliance thereof should be within the accused's

control and it should be reasonably possible for the accused to comply with them. See (S v GAIKA 1971 (1) SA 231 (C) at 232 and S v GROBLER 1992 (1) SACR 184 (C) at 185)

8. It is clear from the record that the suspensive conditions set by the magistrate in this matter are too wide and failed to meet the aforementioned requirements. The sentence cannot be upheld in its current form. It ought to be amended.

Order:

1. Conviction is confirmed
2. The sentence imposed by the magistrate is amended as follows:

2.1 The accused is fined Two Thousand rands (R2000) or sixty days imprisonment half of which is suspended for three (3) years on condition that the accused is not convicted of contravening section 49 (1) (a) of Act 13 of 2002 committed within the period of suspension.

N.M. MBHELE, ADJP

I concur.

P.E. MOLITSOANE, J

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Prepared on 9 October 2026 · Esheria