

SOUTH AFRICA / JUDGMENT

# S v Makutoane (116/2015) [2015]

## ZAFSHC 143 (24 July 2015)

[2015] ZAFSHC 143

## COURT

Free State High Court, Bloemfontein

## BEFORE

C Van Zyl

## CASE / FILE NUMBER

116/2015

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IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Special Review No.: 116/2015

DATE: 24 JULY 2015

In the matter between:

THE STATE.....Appellant

And

LEHLOHONOLO MAKUTOANE

JUDGMENT BY: VAN ZYL, J

DELIVERED ON: 24 JULY 2015

[1] This matter was sent on special review in terms of section 304(4) of the Criminal Procedure Act, 1977, by the Control Magistrate, Bloemfontein, with an accompanying letter stating the following:

*“1. The accused appeared before an Acting Magistrate on a charge of contravening section 4(b) of Act No. 140 of 1992 - Possession of dagga.*

2. His rights regarding legal representation were not explained.

3. He pleaded guilty to the charge and the Magistrate invoked section 112(1)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) and convicted and sentenced the accused as follows:

‘Sentenced to 12 months imprisonment alternatively a fine of R1200.00, wholly suspended for a period of 3 years on condition that the accused is not found in possession of dependence producing substance.’

4. Upon regular checks by the Control Magistrate the following irregularities were detected:

4.1 The manner in which the sentence was phrased is incorrect as the words ‘not convicted of contravening section 4(b) of Act 140 of 1992’ and ‘committed during the period of suspension’ were omitted.

4.2 Review and Appeal rights were not explained to the accused whereas the proceedings are subject to automatic review by virtue of the sentence imposed.

4.3 The offence that the accused was convicted of as well as the sentence invites the application of section 103(2) of the Firearms Control Act, 2000 (Act No. 60 of 2000) and from the record of proceedings it appears that the Magistrate did not hold an enquiry as mandated by the said Act.

4.4 The accused’s rights before sentencing were not explained to him and the accused was not given the opportunity to give evidence, address the court and to call witnesses on sentence.

4.5 The Prosecutor was not given the opportunity to address the court before sentence.

5. In light of the above gross irregularities, it is submitted that the proceedings were not in accordance with justice.

6. The Honourable Reviewing Judge is requested to set aside the proceedings and to order that the case should start de novo.

7. The defects in these proceedings have been brought to the attention of the Magistrate in question and we hope that similar mistakes will not be committed in future.

8. The record of proceedings is forwarded herewith.”

[2] It is clear that the aforesaid issues were correctly raised by the Control Magistrate as they indeed constitute gross irregularities. The proceedings were consequently not in accordance with justice and should be set aside.

[3] The following orders are therefore made:

1. The conviction and sentence are set aside.

2. The matter is referred back to the Court a quo for the accused to be prosecuted de novo before a different presiding Magistrate.

C VAN ZYL, J

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