

SOUTH AFRICA / JUDGMENT

S v Mlambo and Others (R73/2020) [2021] ZAFSHC 48 (24 February 2021)

[2021] ZAFSHC 48**COURT**

Free State High Court, Bloemfontein

BEFORE

Mathebula, O'Brien

CASE / FILE NUMBER

R73/2020

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA,****FREE****STATE DIVISION, BLOEMFONTEIN**Review number: R73/2020
Inthe matter between: THE
STATE
and
TORONCO
MLAMBO
ALBERT
MASHABA
SHEM
SITHOLE
COMFORT
MBOMFANA
CLOUTIS
SKONYANA
YOKETSI
KLAAS
MORGAN
MOKONYANECORAM: MATHEBULA,
J et, O'BRIEN, AJ

JUDGEMENT

BY: MATHEBULA, J

DELIVERED ON: The judgment was handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII on 24 FEBRUARY 2021. The date and time for hand-down is deemed to be 24 FEBRUARY 2021 at 11:00

- [1] The seven accused stood trial on a number of charges before the regional magistrate, Odendaalsrus. Accused number seven pleaded guilty to an additional charge of possession of a firearm. He was sentenced to eight (8) years imprisonment. Together with his co-accused they pleaded guilty to contravening section 1(1) of Act 59 of 1959 (Trespassing) and section 49(1)(a) of Act 13 of 2002 read with section 24 of Act 13 of 2011. (Immigration: Entering, remaining or departing from the Republic). For contravening section 1(1) of Act 59 of 1959 they were each sentenced to undergo five (5) years imprisonment. And for the immigration charge they were sentenced to twelve (12) months imprisonment. The learned magistrate ordered that in terms of section 280 (2) of Act 51 of 1977 the sentences imposed on different charges shall run concurrently.
- [2] The learned magistrate, after giving this matter much thought, realised that she may have imposed the sentence not compliant with the provisions of the law. This review serve before us having been referred by the learned magistrate. Her special request is that we set aside the sentence and impose an appropriate one. The impermissible sentence relates only to charge number two (2) ie contravention of section 1(1) of Act 6 of 1959.
- [3] Section 2(1) of Act 6 of 1959 provides that a person convicted of the contravention of section 1 shall be liable to a fine not exceeding R2 000.00 or to imprisonment for a period not exceeding two (2) years or to both fine and imprisonment. Clearly the learned magistrate erred and she imposed an impermissible sentence. It was a correct decision that the matter be referred for review. It stands to reason that I am at liberty to interfere.
- [4] These accused were sentenced on 23 August 2019. It is regrettable that this matter only come before us after such a long time. The accused persons, particularly number (1) to six (6) have served a substantial period of imprisonment when they were not supposed to do so. I consider it prejudicial to the accused persons that the matter be remitted to the learned magistrate to impose a fresh sentence. All the facts contained in the record are adequate for me to impose the appropriate sentence.
- [5] The sentences imposed by the learned magistrate on charge number two
- (2) are replaced with the following:-

5.1 The accused persons are each sentenced to two (2) years imprisonment effective from 23 August 2019.

It is further ordered that the sentences imposed on this count will run concurrently with the sentences imposed on the other charges.

M. A. MATHEBULA, J

I concur

S. C. O'BRIEN, AJ

/roosthuizen

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Prepared on 13 October 2026 · Esheria