

SOUTH AFRICA / JUDGMENT

S v Mokgoko (A853/14) [2014] ZAGPPHC 950 (17 November 2014) [2014] ZAGPPHC 950

COURT

North Gauteng High Court, Pretoria

BEFORE

M W Msimeki, A M L Phatudi

CASE / FILE NUMBER

A853/14

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IN THE HIGH COURT OF SOUTH AFRICA

(REPUBLIC OF SOUTH AFRICA)

PRETORIA

Magistrate: CULLINAN

Review Case no: PC38/14

Magistrate's Serial no: 721/2014

High Court Ref no.: 112/14

Date: 17 November 2014

Case number: A853/14

THE STATE

VS

SAMUEL PEPSI MOKGOKO

REVIEW JUDGMENT

MSIMEKI, J

[1] On 8 October 2014, and at Cullinan, the accused appeared before presiding Magistrate N V Mabunda charged with the contravention of section 4(a)/4(b) read with sections 1, 13, 17 to 25 and 64 of The Drugs and Drug Trafficking Act 140 of 1992: Possession of Drugs.

[2] The accused, on the same day, pleaded guilty and furnished a statement in terms of Section 112 (2) of Act 51 of 1977 (the “CPA”), Exhibit “A”.

[3] The accused, in the said statement, inter alia, said:

"The luggage was left at the control for Doctor who was my inmate at Alfa Unit as I can move from one unit to the other I took the goods under the impression that it was a tea and milk."

[4] The Court appears to have been satisfied that the accused had admitted all the elements of the offence he had been charged with. He was, accordingly, convicted and sentenced to four years imprisonment.

[5] The Judicial Head: Cullinan, when going through the work, noticed that the accused was convicted in terms of Section 112(2) of the CPA on a contravention of Section 4(b) of Act 140 of 1992 and sentenced solely on his plea of guilty.

[6] Realising that the sentence and conviction had been incompetent, the Judicial head then referred the matter to us in terms of Section 304(4) read with Section 304 (2)(c) of the CPA. The matter, as a result, now serves before me.

[7] The Judicial head, in my view, was correct for the following reasons:

1. The accused's statement clearly evinces no culpability. The explanation that the accused gave speaks volumes. He was under the impression that the State clearly did not prove *dolus* on the part of the accused to possess the 1, 0335 kg dagga.
2. The Statement clearly required no questioning by the presiding magistrate who ought to immediately have realised that the accused

was not admitting the requisite knowledge of unlawfulness. It was incumbent upon the presiding magistrate, upon hearing what the

accused said, to alter the plea of guilty to one of not guilty. This, the presiding magistrate failed to do. See *S V Collet* [1991] ZASCA 33; 1991 (2) SA 854(A).

[8] The conviction and the sentence, pursuant to the accused's statement, were improper and incompetent as the judicial head correctly noticed. The proceedings, indeed, were not in accordance with Justice.

[9] The conviction and sentence, in my view, deserve to be set aside and the matter remitted to the magistrate to note a plea of not guilty and continue with the trial.

[10] I, in the result, make the following order:

1. The conviction and sentence of the accused by presiding magistrate N.V Mabunda on 8 October 2014, in terms of Section 304(c) (iii) of the CPA, are set aside.
2. The case, in terms of Section 304 (c)(v) of the CPA, is remitted to the presiding magistrate to ,in terms of Section 113 of the CPA, record a plea of not guilty and to proceed with the trial.

M. W MSIMEKI

JUDGE OF THE NORTH GAUTENG HIGH
COURT, PRETORIA

I agree.

And it is so ordered.

A.M.L PHATUDI

JUDGE OF THE NORTH GAUTENG HIGH
COURT, PRETORIA

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