

SOUTH AFRICA / JUDGMENT

S v Molalose (451/07) [2007] ZAGPHC 393 (13 November 2007)

[2007] ZAGPHC 393**COURT**

High Courts - Gauteng

BEFORE

Meyer, Saldulker

CASE / FILE NUMBER

451/07

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

High Court Ref. No. 451/07

Magistrate's Serial No. 110/07

Magistrates' Court Case No. 5/00224/07

DATE:13/11/2007

THE STATE

versus

SICELO BETHUEL MOLALOSE

JUDGMENT

- [1] The accused, Sicelo Bethuel Molalose, was arrested on the 17th January 2007. He was charged with contravening the provisions of section 143(3), read with sections 1, 153(1) and 156, of the Mining Rights Act 20 of 1967, and in terms of the charge sheet it was alleged that he, on or about the 17th January 2007 and at or near Crown Mines, City Deep in the district of Johannesburg, unlawfully and intentionally possessed an unwrought precious metal, to wit 7.55 grams of gold, without having been authorised thereto in terms of the provisions of the Act.
- [2] On the 27th July 2007, the accused was tried before Additional Magistrate Mr Budricks in the Magistrates' Court for the district of Johannesburg. He pleaded guilty and was convicted as charged and sentenced to three years imprisonment. The accused was not represented and appeared in person.

- [3] It is to be noted that the Mining Rights Act 20 of 1967 had been repealed by section 68 of the Minerals Act No. 50 of 1991 and by section 110 of the Mineral and Petroleum Resources Development Act No. 28 of 2002, which latter Act commenced on 1 May 2004, except for certain definitions in section 1, and Chapter XVI. The definitions in section 1 and Chapter XVI of the Mining Rights Act No. 20 of 1967 were finally repealed by the Precious Metals Act No. 37 of 2005, which commenced on 1 July 2007. The effect of such repeal and re-enactment need, however, not be considered for present purposes in the light of the view that I take of this matter.
- [4] An element of the charge formulated against the accused was that his possession was unauthorised in terms of the provisions of the Act. Section 143(3) of the Act provides that “[n]o person shall have in his possession unwrought precious metal unless - ...” he falls within one of the categories listed in the section. The court a quo did not question the accused in this regard.
- [5] The following questions and answers were inter alia asked by the court a quo and given by the accused:

“Court: Where did you, or how did you possess this Sir?”

Accused: Your Worship I was still, I was still digging up there your Worship there, that, that underground there at the Crown Mines when I was apprehended your Worship.

Court: Did you have it in your person, on your person (inaudible)?

Accused: Correct

....

Court: Did you know it is an offence Sir to be in possession of ‘unrolled’ gold?

Accused: I did not know your Worship.”

- [6] The court a quo did not satisfy itself that the accused admitted the underlying facts from which the legal conclusion of possession is to be inferred. Furthermore, the accused expressly stated that he did not know that it was an offence to be in possession of “unrolled” gold.
- [7] The accused accordingly did not admit all the elements of the offence with which he was charged, and he should not have been

convicted on his plea of guilty. I am further of the view that the conviction and sentence imposed is clearly not in accordance with justice and that the accused is prejudiced if the record of the proceedings in the court a quo is not forthwith placed before this division.

- [8] I am grateful for the assistance of Adv. Louis Mashiane of the Office of the Director of Public Prosecutions.

[9] In the result the following order is made:

The accused's conviction on the charge that he contravened the provisions of section 143(3), read with sections 1, 153(1) and 156, of the Mining Rights Act 20 of 1967, is set aside;

The sentence of three years' imprisonment imposed upon the accused is set aside;

The case is remitted to the court a quo to be dealt with in terms of section 113 of the Criminal procedure Act 51 of 1977.

MEYER, AJ

ACTING JUDGE OF THE HIGH COURT

I agree.

SALDULKER, J

JUDGE OF THE HIGH COURT

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPHC/2007/393.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/s-v-molalose-unknown-topic-agphc-2007>

Prepared on 13 October 2026 · Esheria