

SOUTH AFRICA / JUDGMENT

# S v Moses (R40/2021) [2021]

## ZAFSHC 191 (12 August 2021)

[2021] ZAFSHC 191

## COURT

Free State High Court, Bloemfontein

## BEFORE

Mathebula, Van Rhyn

## CASE / FILE NUMBER

R40/2021

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IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Review

number: R40/2021

In

the matter between:

THE  
STATE  
and  
ABRAM  
WILLIAM MOSES

CORAM:

MATHEBULA,  
J et  
VAN RHYN, AJ

### JUDGEMENT

BY: MATHEBULA, J

DELIVERED ON: 12 AUGUST 2021

- [1] This matter emanates from the Magistrate's Court, Parys and was referred to us in terms of section 304(4) of Act 51 of 1977 by the Senior Magistrate and Sub-Regional Head, Kroonstad. It relates to the conviction of the accused on charges of contravening sections 1, 11-15 of the Stock Theft Act 57 of 1959 read with section 51(2) of the Criminal Law Amendment Act 105 of 1997 and subsequent sentence of twelve (12) months imprisonment as well as an order

declaring him unfit to possess a firearm in terms of section 103 of Act 60 of 2000. The focal point of his apprehension is that the proceedings were not in accordance with section 112(2) of Act 51 of 1977 and that the sentence imposed was shockingly inappropriate.

[2] The accused was arrested on 30 July 2020 and made his first appearance while unrepresented the very next day following the arrest. The State gave an indication that his release on bail is opposed apparently because of his previous convictions. Nothing turned on this aspect as these previous convictions were not proven. The matter was postponed to 07 August

2020. On the latter occasion he was represented by a local attorney who requested a postponement to 11 August 2020 for possible guilty plea. The bail application was abandoned by the accused.

[3] On 11 August 2020 the accused pleaded guilty and a superficial hand written document signed by the accused and not counter-signed by his attorney was handed in purporting to be his statement in terms of section 112 of Act 51 of 1977. It is on the strength of this document that the learned Magistrate found the accused guilty as charged. Despite such formidable factors laid before the court for a lesser sentence, the court sentenced him to a term of imprisonment as stated in paragraph 1 above.

[4] In his letter dated 18 May 2021 the Senior Magistrate pointed out that the statement in terms of section 112(2) of Act 51 of 1977 does not contain material admissions which form part of such a statement. Of paramount importance, the accused does not state that he deposed to the statement freely and voluntarily while in his sober senses and without any undue influence. Strangely the statement is not written in the first person singular but as a narration of the facts from a third person. Lastly it is lacking in that the value of the stock alleged to be stolen is neither stated nor admitted by the accused. He then proceeded to deal with the reasons why he is of the opinion that the sentence is shockingly inappropriate. The learned Magistrate

in his letter dated 25 May 2020 agreed with the Senior Magistrate and gave his assurance to rectify the error in the future. This in my view is an acknowledgement that he misdirected himself and committed an irregularity.

[5] At the centre of the criminal justice is the right to a fair trial. The purpose thereof is to ensure that wrong people are not convicted by our courts. It is of utmost importance that the trial of every accused person is conducted with the necessary fairness enshrined in the Constitution.[1] Justice must not only be done but it must also be seen to be done. At the outset I agree with the Senior Magistrate that the trial of the accused was not in accordance with the law. Consequently, the conviction and subsequent sentence are not in order.

[6] Section 112(2) of the Criminal Procedure Act 51 of 1977 provides as follows: -

*“(2) If an accused or his legal adviser hands a written statement by the accused into court, in which the accused sets out the facts which he admits and on which he has pleaded guilty, the court may, in lieu of questioning the accused under subsection (1) (b), convict the accused on the strength of such statement and sentence him as provided in the said subsection if the court is satisfied that the accused is guilty of the offence to which he has pleaded guilty: Provided that the court may in its discretion put any question to the accused in order to clarify any matter raised in the statement.”*

- [7] The abovementioned section provides that the accused person (himself/herself) must set out the facts that are admitted and on which he pleaded guilty. In this matter the facts are set out for the accused. It seems to be facts made by his attorney on his behalf. This is the statement that was read into the record by his attorney. The only question posed by the learned Magistrate was whether he confirms the contents and that the signature at the bottom of it is his. The learned Magistrate did not enquire whether that statement was made freely and voluntarily while in his sober senses and that there was no pressure exerted on him. These are fundamental aspects to be established by presiding officers to ensure that the trial is fair and just. Perhaps what is more fatal is that the value of the stock is not admitted by the accused in his statement. In that case there can be no talk of unequivocal plea of guilty to the charge.
- [8] Undoubtedly, the statement as it stands does not comply with the requirements set out in section 112(2) of Act 51 of 1977. The statement does not set out the facts which he admits to sustain a conviction. In the light of the above the learned Magistrate committed an irregularity which rendered the proceedings not to be in accordance with the law.
- [9] The Senior Magistrate raised the issue of what he considers to be a stiff sentence imposed by the learned Magistrate. It will serve no purpose to discuss this issue at this point in the light of the order I intend to make. The effect of the order simply nullify the sentence imposed.
- [10] Accordingly, I make the following order: -

10.1. The proceedings are reviewed and set aside.

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M.A. MATHEBULA, J

I concur

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VAN RHYN, AJ

/tkwapa

- [1] Constitution of the Republic of South Africa Act 108 of 1996.

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