

SOUTH AFRICA / JUDGMENT

## S v Ncube (A322/15) [2015] ZAGPPHC 355 (19 May 2015) [2015] ZAGPPHC 355

COURT

North Gauteng High Court, Pretoria

BEFORE

Hughes, Tlhapi

CASE / FILE NUMBER

A322/15

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IN

THE HIGH COURT OF SOUTH AFRICA

(NORTH

GAUTENG HIGH COURT)

CASE

NUMBER: A322/15

DATE:

19 MAY 2015

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

HIGH COURT REFERENCE

NO: 207/15

MAGISTRATE'S SERIAL

NO: 07/2015

MAGISTRATE'S CASE

NO: T557/2009

JUDGE'S

CHAMBERS

HIGH COURT

GAUTENG DIVISION

PRIVATE BAG 442

PRETORIA

0001

MAGISTRATES COURT: THABAZIMBI  
PRIVATE BAG X 535  
THABAZIMBI  
0380  
05 May 2015  
In the matter

between: THE STATE  
and  
CHARITY NCUBE

CORAM: HUGHES  
J et  
TLHAPI  
J  
SPECIAL REVIEW

## JUDGEMENT

HUGHES J

1. This is a special review in terms of section 304(4) of the Criminal Procedure Act 51 of 1977 (“the Act”) in that the presiding officer of the lower court imposed a sentence beyond the jurisdiction prescribed by section 92(1) (a) of the Magistrate’s Court Act 32 of 1944.
2. Charity Ncube, the accused, was charged with theft. She elected to conduct her own defence and pleaded guilty to theft of clothing from Pep Stores valued at R963.00.
3. The presiding officer conducted an enquiry to confirm her guilty plea. She was duly pronounced guilty as charged.
4. It transpires that the offence was committed on 15 September 2009. Further, that the delay in prosecuting the matter is as a result of the accused having failed to return to court after the matter was postponed. A warrant of arrest was issued and authorized. She appeared in court on 16 March 2015 as a result of the aforesaid warrant.
5. Both the accused and the prosecution presented mitigating factors to the presiding officer after the guilty verdict. The accused also confirmed the eleven previous convictions of theft for the period 2008 to 2014 proven by the prosecution. Notably, none of her previous convictions attracted direct imprisonment without an option of a fine and in all instances she paid the fine.
6. It is relevant to note that the prosecution, taking into account the circumstances of the accused in relation to this particular case, sought the lower court to impose a sentence of three years direct imprisonment without an option of a fine.

7. The factors submitted by the accused in mitigation are merely general in nature in that she was a twenty seven year old single mother of two children whom were in the care of her sister. She was self-employed earning an income of R2000.00 per month. On the day of the commission of the theft she submitted that she stole the clothes from Pep Stores because she was “short of money”.
8. In terms of section 275(1) of the Act this court may after consideration of the record vary, add to, or remit to that lower court to pass sentence afresh. The sentence imposed by the presiding officer in the lower court of “six years imprisonment half of which is wholly suspended for five years on condition that the accused is not convicted of a similar offence” is clearly beyond the jurisdiction of the lower court. Thus, in terms of section 275(1) this matter is duly referred back to the presiding officer who was seized with the matter to sentence the accused afresh.
9. In the circumstances I make the following order:

9.1 The sentence imposed by the presiding officer of six years imprisonment half of which is wholly suspended for five years on condition that the accused is not convicted of a similar offence, is set aside and in terms of section 275(1) of the Act is remitted to the presiding officer for sentencing.

W. Hughes

Judge of the High Court

I concur and it is so ordered:

V. V. Tlhapi

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Prepared on 12 October 2026 · Esheria