

SOUTH AFRICA / JUDGMENT

S v Ngake and Another (70/05) [2005] ZANWHC 44 (9 June 2005)

[2005] ZANWHC 44

COURT

North West High Court, Mafikeng

BEFORE

R D Mokgoatlheng, A A Landman

CASE / FILE NUMBER

70/05

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CA NO : 70\05

IN THE HIGH COURT OF SOUTH AFRICA

(BOPHUTHATSWANA PROVINCIAL DIVISION)

THE STATE

vs

MOSES NGAKE

DONALD MAJORO

REVIEW

JUDGMENT

MOKGOATLHENG AJ:

INTRODUCTION:

- [1] This matter was sent as a special review in terms of section 304 A of Act No 51 of 1977 by Regional Court Magistrate S du Toit.
- [2] The Two Accused on the 2nd September 2000 were charged and convicted of contravening section 143 (1) of the Mining Rights Act No 20 of 1961 in that on or about the 3rd April 2004 and at or near Kogomotso Police Station in the Regional Division North West, the Accused did unlawfully and intentionally barter, sell, deal in, receive or dispose of by way of barter pledge or otherwise, an unwrought precious metal to wit, one unpolished diamond valued at R1625.00 with a weight of 1.22 carats without them being authorised thereto in terms of the provisions of the abovementioned Act.

- [3] The Accused were also charged of contravening section 5 (a) of the Drugs and Drug Trafficking Act No 140 of 1992 in that at the same place and at the same time they were wrongfully and unlawfully in possession of a prohibited dependence producing substance or plant from which such dependence producing substance can be manufactured to wit 2 grams of dagga.
- [4] The Court found Accused No 1 guilty on both counts. Accused No 2 was found guilty on count one and acquitted on count two.
- [5] After convicting both Accused on count one that is, dealing in unwrought precious metal, the Regional Court Magistrate realised that such conviction was flawed in that diamonds do not fall within the purview of the definition of unwrought precious metals in terms of section 1 (a) and 1 (b) of the Act.
- [6] The Regional Court Magistrate requests in terms of section 304 A (a) that the proceedings relating to the convictions of both the Accused in relation to dealing in unwrought precious metals be reviewed as in his view the Accused should have been charged in terms of the provisions of the Precious Stones Act No 50 of 1991.
- [7] I have read the record and concur with the Regional Court Magistrate that the conviction of the two Accused is not in accordance with justice in relation to the charge of dealing in unwrought precious metal. In my view although the conviction of Accused No 1 on the charge of possession of dagga is correct; such conviction emanates from and forms part of the impugned proceedings.
- [8] It would not be in the interests of justice to set aside the convictions on the charge of dealing in unwrought precious metals, and confirm the conviction of possession of dagga in relation to Accused No 1.
- [9] In the premises all the convictions relating to both count one and count two are quashed in terms of section 304 2 (c) (i) and the proceedings are set aside in terms of section 304 2 (c) (iii) of Act No 51 of 1977.

R D MOKGOATLHENG

ACTING JUDGE OF THE HIGH COURT

I agree.

A A LANDMAN

JUDGE OF THE HIGH COURT

09 JUNE 2005

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Prepared on 10 October 2026 · Esheria