

SOUTH AFRICA / JUDGMENT

S v Rayi (13/2019) [2020]

ZANWHC 14 (2 January 2020)

[2020] ZANWHC 14

COURT

North West High Court, Mafikeng

BEFORE

DJAJE

CASE / FILE NUMBER

13/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH

WEST DIVISION, MAHIKENG

HIGH COURT REF

NO: 13/2019

DISTRICT: MATLOSANA

MAGISTRATE

CASE NO: KLD1771/18

In

the matter between:

THE

STATE

And

SAMUEL

SELE RAYI

REVIEW

JUDGMENT

DJAJE J

[1] This matter was sent on special review on 13 December 2019 by the Magistrate of Klerksdorp Court with the following request:

“1. In the abovementioned case, the accused had been convicted in terms of Sec 2(1) read with Sections 1 and 3 of the Dangerous Weapon Act 72 of 1968, and accordingly, sentenced.

2. The above Act had been repealed and the accused should have been convicted (and sentenced) in terms of Act 15 of 2013.
 3. In view of the above, I respectfully request the conviction and sentence to be set aside.
 4. I await your further instruction(s) herein.”
- [2] The issue that arises from the letter by the Magistrate is that the accused was convicted of an offence that no longer exists. In the charge sheet the accused was charged as follows:
- “That the accused is guilty of the crime of contravening the provisions of Section 2(1) read with Section 1 and 3 of the Dangerous Weapons Act 71 of 1968- Possession of Dangerous Weapon. In that on or about 19/08/2018 and at or near Jouberton in the District/Regional Division of Matlosana, the accused was/were unlawfully in possession of a dangerous weapon which if used in an assault could inflict serious bodily injury and/or of any object which so resembles a firearm that it was likely to be mistaken for a real firearm, to wit a panga knife.”*
- [3] The Dangerous Weapon Act 71 of 1968 has been repealed by Act 15 of 2013. The accused should not have been convicted in terms of an Act that has been repealed. The State should have invoked the provisions of section 3(1) of Act 15 of 2013 and not section 2(1) of the repealed Act.
- [4] The accused is prejudiced as he was not appraised of the correct legal position and is now convicted of an offence based on a repealed Act. In my view the proceedings were not in accordance with justice and the conviction should be set aside.

Order

- [5] Consequently, the following order is made:

1. The conviction and sentence is set aside.

J. T. DJAJE

JUDGE OF THE HIGH COURT, NORTH WEST DIVISION

02 JANUARY 2020

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