

SOUTH AFRICA / JUDGMENT

S v Sebone (A627/2012) [2012] ZAGPPHC 216 (4 September 2012)

[2012] ZAGPPHC 216

COURT

North Gauteng High Court, Pretoria

BEFORE

N.P Mngqibisa-Thusi, N Mavundla

CASE / FILE NUMBER

A627/2012

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NOT

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IN

THE HIGH COURT OF SOUTH AFRICA

(NORTH

GAUTENG HIGH COURT, PRETORIA)

Date: 04/09/2012

Date: A627/2012

Date:

15 August 2012
Supreme
Court Ref: 474
Magistrate's
Serial No: 05/2012
Review
Case No: 05/2012
In

the matter between:

THE
STATE
ISAAC
SEBONE
.....Respondent
REVIEW

JUDGMENT

MNGQIBISA-THUSI J:.

[1] The accused was charged and pleaded guilty to contravention of section 38(1)(b) read with section 38(2) of the Limpopo Environmental Management Act 7 of 2003 ("the Act"), in the Mokopane (Potgietersrus) Magistrates Court.

[2] On 19 January 2012 he was convicted on the basis of his plea. However, before the proceedings on sentence could start, the presiding officer, acting senior Magistrate, Mr A P Van Der Kooi, realised that in his statement in terms of section 112(2) of the

Criminal procedure Act 51 of 1977, the accused had admitted to knocking down a protected species using tractor, such offence is not covered by section 38(1)(b) on which he was charged and convicted, but falls squarely within the provisions of section 31(1)(a) of the Act, which does not require the use of any device in the hunting. Section 38(1)(a) reads as follows:

"31. Hunting of wild and alien animals.-(1) No person may without a permit hunt-fa) Specially protected wild animals."

[3] Having read the record and having considered the matter, I am satisfied that the accused was charged and convicted on an incorrect

section of the Act and that his conviction on the basis of 38(1)(b) should be set aside.

[4] Accordingly I would recommend that the following order be made:

"The conviction of the accused on 19 January 2012 is hereby set-aside."

N.P MNGQIBISA-THUSI

Judge of the High Court North Gauteng High Court

I agree and it is so ordered

N MAVUNDLA

Judge of the High Court

North Gauteng High Court

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