

SOUTH AFRICA / JUDGMENT

S v Yacoob (A715/14) [2014] ZAGPPHC 732 (29 September 2014) [2014] ZAGPPHC 732

COURT

North Gauteng High Court, Pretoria

BEFORE

F G Preller, AJ Bam

CASE / FILE NUMBER

A715/14

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DATE: 29 SEPTEMBER 2014

CASE NUMBER: A715/14

Magistrate

NELSPRUIT

Case No: 2832/2013 High Court Ref No: 424/14

THE STATE V SABERA AHMED YACOOB

REVIEW JUDGMENT

PRELLER. J

This matter comes before us by way of a special review in terms of section 304(4) of the Criminal Procedure Act, from the magistrate of Nelspruit.

The accused was convicted on 105 counts of fraud and sentenced to a fine of R500.00 or one month imprisonment on each count. The sentence was suspended on condition that inter alia the accused repay the amount of R372 600.18 in monthly instalments of R5 500.00 until the full amount is paid.

During overhead checking of the case it was noted:

(a) That no period of suspension of the sentence had been mentioned.

- (b) That the compensation order of R372 600.18 exceeded the jurisdictional limit of R100 000.00 (currently R300 000.00) in terms of section 300 of the Act and
- (c) see that the instalments of R5 500.00 would not be sufficient to make up the full amount within the period of sixty months for which the sentence was suspended.

The magistrate also mentioned in his letter that according to their records the accused had not made any payments in respect of the “compensation fine”. This court was accordingly requested to confirm the conviction but to set the sentence aside and issue an order that the accused be sentence afresh in the Regional Court.

Neither in its judgment on sentence nor in the sentence as recorded on the form J15 did the trial magistrate specify in terms of which section of the Act the sentence was suspended but it is clear enough that it was a conditional suspension of the sentence in terms of section 297(1)(b) read with 1(a)(i)(aa).

The checking magistrate who sent the matter on special review obviously read the sentence as one including a compensation order in terms of section 300, hence inter alia his concern about the jurisdictional limit.

A compensation order in terms of section 300 is clearly something very different from a condition of suspension in terms of section 297(1). In terms of the former the amount of the compensation that may be awarded is limited to R300 000.00 (previously R100 000.00), has the effect of a civil judgment and precludes the victim from pursuing any civil remedies against the accused. There is no such limit on the amount of compensation that may be ordered in terms of section 297(1).

It is clear from the body of the judgment that the intention of the magistrate was to suspend the sentence for a period of five years and it would have been a simple matter of amending the recorded sentence if that had been the only problem. However, there was no investigation into the question whether the accused is in a position to make the payments ordered by the magistrate nor whether the complainant might be satisfied with a lesser amount that is in the means of the accused.

I would therefore order that the conviction be confirmed but that the sentence be set aside. The matter is referred back to the regional court and the magistrate is requested to conduct a proper enquiry to establish the ability of the accused to comply with the suspensive condition and whether the complainant would be satisfied with a lesser payment in settlement of his claim.

F G PRELLER

JUDGE OF THE NORTH GAUTENG HIGH COURT

I agree

AJ BAM

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