

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

- (1) NOT REPORTABLE
- (2) NOT OF INTEREST TO OTHER JUDGES
- (3) REVISED.

**Review Number: 09/17
Court *a quo* Case Number: A1436/17
10/12/2018**

In the matter between:

VUSIMUZI JABULANI NGUBANE

And

THE STATE

REVIEW JUDGMENT

MOSOPA AJ:

INTRODUCTION

- [1] This matter served before me as a special review in terms of section 304(4) of the Criminal Procedure Act 51 of 1977 (hereinafter called the "Act").

BACKGROUND

- [2] The Accused was arraigned in the Benoni Magistrate's Court before .

Magistrate Verhoef on one count of possession of drugs in contravention of section 4 (b) read with sections 1,13,17 to 25 and 64 of the Drugs and Drug Trafficking Act 140 of 1992 (Possession of Drugs).

- [3] The Accused was legally represented and plead guilty to the charge levelled against in. Section 112 (2) statement was prepared .on behalf of the Accused was read into record which was confirmed by the Accused and admitted as Exhibit "A".

- [4] In section 112(2) statement the Accused admitted that on the 30 .June 2017 he was at Acton Villa, Benoni which is in the jurisdiction of the Benoni Magistrate's Court. As he was walking with his friends a police vehicle emerge and the police officer asked permission to ·search him. He allowed the police officer to search him. Th police officer found a small plastic bag containing dagga in his possession. The Accused stated that he was aw e that it is wrongful for him to possess the dagga which was found inside the pocket of his trouser.

- [5] The Accused was then convicted on the strength of the section 112(2) statement. After conviction the Accused, was sentenced to pay a fine of R500, 00 (Five Hundred Rand) or to undergo (3) three .months imprisonment. It was further ordered that the Accused in terms of section 103 of Act 60 of 2000, is declared unfit to posses a firearm.

- [6] The matter then came before Magistrate L. Knight during judicial quality control duties, whilst inspecting finalised case Magistrate L. Knight deemed it prudent to refer the matter to the High Court for special review in terms of sec ion 304(4) of the Act in respect of the order made in terms of section 103 of Act 60 of 2000 that the Accused be declared unfit to possess a firearm. The letter referring the matter ,o High Court read in part as follows; "The abovementioned criminal case was finalised on 3/08/2017 in a district Court held at Benoni. The matter came to my attention during judicial quality control duties, whilst inspecting finalised cases. The Accused was legally represented and was convicted after a plea of quality on a charge of contravention of section 4(b), read with sections 1,13,17 to

25 and 64, of the Drugs and Drugs Trafficking Act 140 of 1992- Possession of Drugs in that he wrongfully had one packet in his possession. e Magistrate thereafter heard a dress in mitigation of sentence and a dress by the state and he sent need the Accused by imposing a fin of R500,00 (Five Hundred Rand) alternatively that the accused is sentenced undergo (3) three months imprisonment. The Magistrate furthermore made of 2000 in terms of section 103 of Act 60 of 2000 in terms of which he found the Accused unfit to possess a firearm. (On the transcribed record the Magistrate just refers to section 103 but on the face of the charge sheet under the sentence part he refers to section 103(2)... The crime of which the Accused was convicted does not fall under section 103(1) or 103 (2) of Act 60 of 2000. Section 103(1) is applicable der 103(1) (k) if the Accused was convicted of dealing in drugs. The finding in terms of section 103 albeit subsection 1 or 2) is incorrect. I humbly and respectfully request the Honourable Judge to consider setting aside the order made in terms of section 103 of Act 60 of 2000.

[7] After receiving the matter I then wrote a letter to the Magistrate Knight where I queried the following;

- 7.1 That the record does not show that the substance, found in possession of the Accused, was sent to the forensic science laboratory for analysis; and
- 7.2 Given such circumstances was the trial Magistrate competent to convict the used of possession of dagga?

[8] Magistrate Knight responded in a letter dated 1 August 2018 to the queries I raised and stated;

- 8.1 That the Accused was legally represented and admitted having been in possession of dagga;
- 8.2 That there is no provision in section 112 for state to present evidence at that stage, and
- 8.3 That where a person admits that he was in possession of a drug

listed under the act, it is not a requirement to a . it that the drug was analysed.

- [9] Magistrate Knight further referred me to a list of authorities supporting her contention respect of the conviction of the Accused. I must pause at this stage to mention that I am satisfied that the Accused was properly convicted on the charge levelled against him and the conviction was in accordance with justice.

DISCUSSION

- [10] The only issue for determination is the fact whether the order made in terms of section 103 of Act 60 of 2000 incorrect or not.

- [11] Section 103(1) (j) and (k) of the Firearm Control Act 60 of 2000 provides;

"103(1) – Unless the court determines otherwise, a person becomes unfit to possess a firearm if convicted of-

- (j) any offence involving the abuse of alcohol and drugs
- (k) any offence involving dealing in drugs".

- [12] It is clear in *casu*, that the Accused was convicted of the possession of drugs in contravention of section 4(b) read with the provisions of sections 1, 13, 17 to 25 and 64. of the Drugs and Drug Trafficking Act 140 of 1992. The offence on which the Accused is convicted, does not fall under the provisions of section 103 (1) G) or (k) of section 60 of 2000 as was correctly pointed out by Magistrate Knight.

- [13] It is my considered view that in declaring the Accused unfit to possess a firearm the trial Magistrate acted ultra-vires and irregularly. In the process the trial magistrate disregarded the Accused's right to a fair trial and in the process rendered the order to not be in accordance with justice.

- [14] Magistrate Knight in a letter which referred the matter for special review

indicates that she discussed the matter with the trial Magistrate, who was a contract Magistrate , and the trial Magistrate confirmed that this was an oversight on his part. It is because of this concession made by the trial Magistrate to Magistrate Knight that the matter w s not referred by me to the Director of Public Prosecution for their input.

[15] The order made by the trial Magistrate in terms of section 103 Act 60 of 2000 cannot be supported and stands to be review d and set aside.

ORDER

[16] In light of the above I make the following order;

- 16.1. The Conviction on the possession of drugs in terms of section 4(b) read with the provisions of sections 1, 13, 17 to 25 and 64 of the Drug and Drug Trafficking Act 140 of 1992 confirmed.
- 16.2. The Sentence imposed on the Accused to pay a fine of R.500, 00 or ·to undergo three months imprisonment is confirmed.
- 16.3. The Order in terms of section 103(1) of Act 60 of 2000 declaring Accused unfit to possess a firearm is reviewed and set aside.

M J. MOSOPA

ACTING JUDGE OF THE HIGH COURT

I AGREE

MAUMELA

JUGE OF THE HIGH COURT