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REPUBLIC OF SOUTH AFRICA

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

High Court Ref No: 17/11

Magistrates' Serial No: 01/10

Case NO: A 566/09

In the review matter of:

STATE

versus

SULLIMAN LIESABON

Accused No 1

ROWAN JANSEN

Accused No 2

REVIEW JUDGMENT

MEYER , J

[1] This is a review in the ordinary course. The accused, Mr Sulliman Liesabon (accused no 1) and Mr Rowan Jansen (accused no 2), were charged in the Magistrates' Court, Randfontein with one charge of housebreaking with the intent to steal and theft

(count 1) and with one charge of unlawful possession of ammunition (count 2). On 5 May 2010, each accused was convicted of theft, including the theft of ammunition, and acquitted on the charge of unlawful possession of ammunition. The learned magistrate found that a duplication of convictions would occur if the accused were convicted of both counts 1 and 2. I do not consider it necessary to express any view on this finding. Accused no 1, who was 24 years of age, was sentenced to imprisonment for twelve months pursuant to his conviction of theft and the passing of sentence in respect of accused no 2, who was 15 years old at the time of the commission of the crime, was postponed for a period of five years on certain conditions.

[2] The learned magistrate, correctly in my view, found that the state did not prove the alleged housebreaking and that the evidence established that the accused contravened s 36 of the General Law Amendment Act 62 of 1955. This section provides that

'[a]ny person who is found in possession of any goods, other than stock or produce as defined in section thirteen of the Stock Theft Act, 1923 (Act No. 26 of 1923), in regard to which there is reasonable suspicion that they have been stolen and is unable to give a satisfactory account of such possession, shall be guilty of an offence and liable on conviction to the penalties which may be imposed on a conviction of theft.'

[3] A conviction for an offence under s 36 of the General law Amendment Act is competent where an accused is charged with housebreaking with the intent to steal and theft (*S v Arendse en 'n ander* 1980(1) SA 610 (C)). The evidence before the court *a quo* did not prove all the elements of the crime of theft and the learned magistrate clearly erred in convicting each accused of theft. They should each have been convicted of contravening s 36 of the General Law Amendment Act 62 of 1955.

[4] Adv. Zeiss van Zyl S.C. of the Office of the Director of Public Prosecutions: South Gauteng High Court furnished me with an oral review opinion, which corresponds with my findings. I thank him for his assistance. I further do not consider it appropriate to interfere with the sentences imposed upon the accused.

[5] In the result the convictions of accused no 1 and of accused no 2 of theft are set aside and replaced by the following:

1.

1.1 Accused no 1 is found guilty of contravening s 36 of the General Law Amendment Act 62 of 1955.

1.2 The sentence imposed upon accused no 1 is confirmed except that such sentence shall be pursuant to his conviction of contravening s 36 of the General Law Amendment Act 62 of 1955.

2.

2.1 Accused no 2 is found guilty of contravening s 36 of the General Law Amendment Act 62 of 1955.

2.2 The sentence imposed upon accused no 2 is confirmed except that such sentence shall be pursuant to his conviction of contravening s 36 of the General Law Amendment Act 62 of 1955.

WEPENER, J

[6] I agree with my brother Meyer, J.

PA MEYER
JUDGE OF THE HIGH COURT

WL WEPENER
JUDGE OF THE HIGH COURT

27 May 2011