



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

In the matter between:

**Case No: CA&R168/2023
Delivered: 6 October 2023**

THE STATE

And

ROHAN JORDAAN

SPECIAL REVIEW JUDGMENT

Beshe J

[1] The accused in this matter stood trial on a charge of assault with intent to cause grievous bodily harm in the East London Magistrates Court. He was assisted by a legal representative. He was convicted as charged. The following sentence was thereafter imposed:

“To pay a fine of R3000 (Three Thousand Rand) or 12 (twelve) months imprisonment of which 6 (six) months imprisonment is suspended for a period of 3 (three) years on condition that the accused is not again convicted of assault with intent to do grievous bodily harm during the period of suspension.”

[2] The Magistrate has referred the matter to this court for reviewal in terms of Section 304(4) of the Criminal Procedure Act¹ on the basis, so she concedes,

¹ Act 51 of 1977.

that the sentence imposed lacks clarity in respect of the terms of the suspension thereof. The matter would ordinarily not have been subject to a review in light of the fact that the accused was assisted by a legal representative.

[3] It is trite that the formulation of a suspended sentence and the conditions attached thereto must be clear and precise. The example that is provided by this case underpins the need for the wording of a suspended sentence and the conditions attached thereto, to be clear and precise. This case shows that the lack of clarity in this regard makes it difficult for the sentence to be complied with or enforced. A reading of the sentence reveals that it is only half of the term of imprisonment that is suspended. As far as the fine is concerned, it is not clear whether half thereof is also suspended. The enforcer will be left to guess that half of the fine is also suspended. The worse scenario would be where an accused person may have been in a position to pay R1500.00 which is half of R3000.00 but because there is no indication that half of the fine is also suspended, he may end up serving the term of imprisonment. Even if he had the R3000.00, on what basis would he pay R1500.00 because there is no indication that part of the fine is suspended.

[4] I am therefore in agreement with the Magistrate that the sentence in so far as it relates to which portion thereof is suspended lacks clarity.

[5] In the circumstances, it will be appropriate to set the sentence aside and replace it with the following sentence:

The accused is sentenced to pay a fine of three thousand rand (R3000.00) or to undergo imprisonment for twelve (12) months. Half of the sentence, namely R1500.00 or six (6) months imprisonment is suspended for three (3) years on condition that the accused is not convicted of assault with intent to cause grievous bodily harm committed during the period of suspension.

It is so ordered.

N G BESHE
JUDGE OF THE HIGH COURT

MVIKO A J

I agree.

N P MVIKO
ACTING JUDGE OF THE HIGH COURT