



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

Case number: R42/2018

In the matter between:

THE STATE

And

BONGANI MAWHLDLAZI

CORAM: REINDERS, J ET CHESIWE, J

JUDGMENT BY: CHESIWE, J

DELIVERED ON: 25 APRIL 2019

- [1] This matter has been referred to the High Court for special review in terms of Section 304(4) of the Criminal Procedure Act 51 OF 1977 (the CPA). The Acting Senior Magistrate for Bloemfontein pointed out that as a result of doing systematic checks she detected irregularities in respect of the conviction and sentencing of the accused.

- [2] The accused was arrested on or about 17 June 2018 and was allegedly to have been found in unlawful possession of eight (8) cellular telephones to which there was a reasonable suspicion that the goods had been stolen and the accused was unable to give a satisfactory account of these cell phones. On 2 August 2018 the accused was before court and was represented by Mr Koloti. The accused pleaded guilty and was convicted and sentence to a fine of R2000 or four months imprisonment.
- [3] The learned Acting Senior Magistrate in the memorandum attached the transcribed record pointed out the following: The accused was charged in terms of the Stock Theft Act 57 of 1959 (the STA) and taking cognisance of the fact that cell phones are not goods as defined in the Stock Theft Act. The learned magistrate further pointed out that the accused tried to disclose a defence and that was ignored by the trial court. With regard to sentencing the Presiding Officer made unnecessary and improper comments. The Acting Senior Magistrate submitted that the conviction and sentence of the accused be set aside as the proceedings were not in accordance with justice.
- [3] The Presiding Magistrate concedes in her reasons for review that she inadvertently admitted the cell phones as stock in terms of the STA. In terms of the definitions in section 1 of the STA, stock is defined as any horse, mule, ass, bull, cow, ox, heifer, calf, sheep, goat, pig, poultry, domesticated ostrich, domesticated game or the carcase or portion of carcase of any such stock.

- [4] In respect of sentencing the accused the Presiding Officer simply ascertain how much bail was paid and made and order that the money for the bail can be taken to pay the fine. (Page 7 lines 15 – 21 of the record). The learned magistrate made an order in terms of section 103(2) of the Firearms Control Act 60 of 2000 that the accused was fit to possess a firearm without conducting any substantial enquiry to determine if accused was fit to possess a firearm. She practically put a firearm into the hands of someone who had no respects of the law.
- [5] Accordingly, the concerns of the learned Acting Senior Magistrate are obviously well founded and correct. Also taking into consideration that the Presiding Officer conceded to the error committed by her. I accordingly concur with the Acting Senior Magistrate that the conviction and sentence be set aside.
- [6] In view of the aforesaid the order of the trial court on conviction and sentence is set aside and the matter remitted to the learned magistrate.

S. CHESIWE, J

I CONCUR

C. REINDERS, J