



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

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

Review No.: R238/2018

In the review of:-

THE STATE

and

JONE HASSAN SISIR

CORAM: MUSI, AJP

JUDGMENT BY: MUSI, AJP

DELIVERED ON: 24 December 2018

- [1] This matter was sent on special review by the Magistrate, Jagersfontein.
- [2] The accused was convicted of contravening section 49(1)(a) of Act 13 of 2002 and contravening section 4(b) of Act 140 of 1992 – possession of dagga.
- [3] When he testified under oath in mitigation of sentence he said that his asylum seeking permit expired ten days before his arrest and that he did not have enough money to go and renew it.
- [4] The magistrate was of the view that this explanation might be a defence to the charge of contravening section 49(1)(a). The magistrate referred the matter on special review, requesting that the conviction be set aside.

[5] Section 113 of the Criminal Procedure Act, 51 of 1997 reads as follows:

“(1) If the court at any stage of the proceedings under section 112 (1) (a) or (b) or 112 (2) and before sentence is passed is in doubt whether the accused is in law guilty of the offence to which he or she has pleaded guilty or if it is alleged or appears to the court that the accused does not admit an allegation in the charge or that the accused has incorrectly admitted any such allegation or that the accused has a valid defence to the charge or if the court is of the opinion for any other reason that the accused's plea of guilty should not stand, the court shall record a plea of not guilty and require the prosecutor to proceed with the prosecution: Provided that any allegation, other than an allegation referred to above, admitted by the accused up to the stage at which the court records a plea of not guilty, shall stand as proof in any court of such allegation.

(2) If the court records a plea of not guilty under subsection (1) before any evidence has been led, the prosecution shall proceed on the original charge laid against the accused, unless the prosecutor explicitly indicates otherwise.”

[6] Section 113 can therefore be applied at any stage before sentence is passed. Sentence was not passed in this matter.

[7] The magistrate should have applied section 113 instead of sending the matter on review. The matter should therefore be remitted to the magistrate to apply section 113.

[8] I therefore make the following order.

The matter is remitted to the Magistrate Jagersfontein to deal therewith in accordance with this judgment and the law.

C. J. MUSI, J