



**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 number: R166/2017

In the matter between:

THE STATE

and

MODUPE MARTIN MOLEHE

CORAM: RAMPAL, *et* MATHEBULA, J

JUDGMENT BY: RAMPAL, J

DELIVERED ON: 26 OCTOBER 2017

SPECIAL REVIEW

- [1] The matter came to court by way of a special review in terms of section 304(4) Criminal Procedure Act 51/1977. The matter

originated from Thaba Nchu District Court. It was allocated to me on the 19 October 2017. This review proceedings were initiated by the trial magistrate.

- [2] The review concerns the sentence. The accused faced two criminal charges. The first charge was assault. The prosecution alleged that he unlawfully and intentionally assaulted Ms Masego Diphoko at Beaver Camoe Store, Thaba Nchu on 16 May 2017. The second charge was one of the robbery. The prosecution alleged that he unlawfully and intentionally assaulted Mpho Pitso at Selosesha, Thaba Nchu on 16 May 2017 and with force took her property being a Samsung Galaxy cellphone worth R2000. He pleaded guilty to both charges in terms of sec 112 Act No 51/1977.
- [3] The accused was then convicted on the strength of his plea in terms of sec 112(2). He was convicted on 20 July 2017. As regards assault he was sentenced to a fine of R2000 or 6 month term of imprisonment in default of payment. The first charge or sentence is not before us on review. As regards robbery he was sentenced to pay a fine of R3000 or to undergo a 42 month term of imprisonment. Half of the latter sentence was conditionally suspended for three years.
- [4] On 28 September 2017 the trial magistrate signed a special request for the review of the sentence imposed in respect of the charge of robbery. The magistrate explained that she realised on 28 July 2017 that the custodial portion of the sentence she imposed on the accused was not competent. At paragraph three of her memorandum she wrote:

“I am bringing this matter to the High Court for the amendment of the error of 42 months to that of sentence of 36 months as reflected below.”

- [5] The sentence imposed on the accused in respect of the second charge of robbery reads as follows:

“In respect of count 2, you are **finned to pay the amount of R3 000.00 or to undergo 42 months imprisonment, half of which is suspended for a period of three years** on condition that you are not found guilty of robbery committing during the period of suspension.”

- [6] The penal jurisdiction of a district court is 36 months. The custodial term of the sentence imposed on the accused was 42 months. It exceeds the jurisdiction of the district magistrate by 6 months. To that extent the sentence imposed on the accused was erroneous. The district magistrate did not have the competency to impose it. Consequently I am inclined to accede to the special request of the magistrate in order to correct the error.

- [7] In the result I make the following order:

7.1 The sentence imposed on the accused by the district magistrate at Thaba’Nchu on 20 July 2017 in respect of the second charge of robbery is hereby set aside.

7.2 The nullified sentence is substituted with the following:

“The accused is fined R3000 in default of which to undergo 36 months imprisonment, half of the sentence is suspended for a period of 3 years on condition that the accused is not found guilty of robbery committed during the period of suspension.”

MH RAMPAL, J

I concur

AM MATHEBULA, J