

REPUBLIC OF SOUTH AFRICA



A930/2014

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

CASE NO: 702/2014

High Court ref. no. 06/2014

Magistrate case No: MR 34/2014

|     |                                                                                                |
|-----|------------------------------------------------------------------------------------------------|
| (1) | REPORTABLE: YES / NO                                                                           |
| (2) | OF INTEREST TO OTHER JUDGES: YES/NO                                                            |
| (3) | REVISED.                                                                                       |
|     | 9 December 2014                                                                                |
|     | DATE                                                                                           |
|     | <br>SIGNATURE |

8/1/2015

In the matter between:

**THE STATE**

and

**TUMELO TSOKELA**

**ACCUSED**

---

**SPECIAL REVIEW JUDGMENT**

---

**TEFFO, J:**

[1] The accused was convicted in the magistrate's court, Groblersdal, of contravening the provisions of section 82 of the Third General Law Amendment Act no. 129 of 1993 in that he was found in possession of car breaking/housebreaking implements. He was legally represented throughout the proceedings. He pleaded not guilty and evidence was led to prove his guilt.

[2] He was then sentenced to pay a fine of R6000-00 or serve six months imprisonment half of which was suspended for five years on condition that he is not convicted of car breaking/housebreaking implements committed during the period of suspension.

[3] The magistrate then conducted an enquiry in the terms of the Firearms Control Act 60 of 2000 into the competency of the accused to possess a firearm and then declared the accused unfit to possess the firearm.

[4] Before the conviction of the accused, after the State and the defence had made their submissions, the magistrate just said without giving reasons:

*"Accused stand up you are a liar, you are found guilty as charged".*

[5] The matter came before me on special review in terms of section 304(4) of Act 51 of 1977 after a routine administrative process discovered that the conviction of the accused was not in accordance with justice and that the order declaring the accused unfit to possess a firearm was made in error as the enquiry did not comply with the provisions of the Firearms Control Act. 60 of 2000.

[6] After receipt of the review and the record of the proceedings herein together with the reasons and comments from the magistrate who presided over the matter, I invited comments from the National Director of Public Prosecutions on the issues raised in the matter.

[7] The comments were received and taken into account when writing this judgment.

[8] The accused's version of events was lacking, inconsistent, unreliable and not credible as against the version put by the State witnesses. It is clear from the record that the accused was a poor witness. It is my view that from the evidence the magistrate cannot be faulted for convicting the accused although labelling the accused a liar was a bit above board. The somehow capricious

procedure adopted by him after argument was not of such a nature as to vitiate the proceedings. Doing so would amount to a miscarriage of justice but in this matter the evidence was clear and overwhelming against the accused. The finding of guilt on the accused on the charge levelled against him was not a misdirection. The accused was correctly convicted as charged.

[9] It was irregular for the magistrate to give judgment without reasons. However the magistrate furnished reasons after being requested by the defence to do so. I find the reasons thereof well balanced and plausible for the decision that he finally arrived at. There is therefore no reasons for me to interfere with the decision of the magistrate in convicting the accused. Having regard to the record and the reasons so furnished, I am also of view that the sentence imposed was appropriate under the circumstances. I find that the conduct of the magistrate in having to submit his reasons for judgment after being requested to do so by the defence, did not constitute an irregularity so grave and gross to justify the setting aside of the proceedings.

[10] The provisions of section 103 read with schedule 2 of the Firearms Control Act 60 of 2000 do not list the offence with which the accused was charged and convicted as an offence that requires an enquiry into his competency to possess a firearm. The institution of such an enquiry by the magistrate was therefore improper. I find that there was no basis for the magistrate to conduct the enquiry in terms of section 103(2) of Act 60 of 2000 under the circumstances.

[11] It is therefore my considered view that the conviction and sentence of the accused is in accordance with justice. It is therefore confirmed.

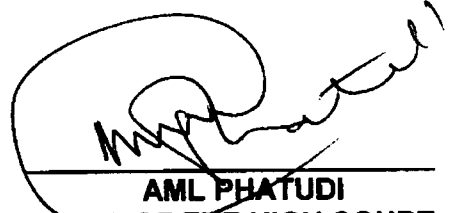
[12] Consequently I make the following order:

12.1 The conviction and sentence of the accused is confirmed and the order in terms of section 103(2) of Act 60 of 2000 is set aside.



**MJ TEFFO**  
**JUDGE OF THE HIGH COURT**  
**(GAUTENG DIVISION, PRETORIA)**

I agree



**AML PHATUDI**  
**JUDGE OF THE HIGH COURT**  
**(GAUTENG DIVISION, PRETORIA)**