

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Special Review Number: 97/2015

In the review between:

M MOTSEKI

Appellant

and

THE STATE

Respondent

CORAM:

VAN ZYL, J et REINDERS, AJ

JUDGMENT BY:

REINDERS, AJ

DELIVERED ON:

11 JUNE 2015

[1] This matter has been sent on special review in terms of Section 304(4) of the Criminal Procedure Act, 51 of 1977, from the Welkom Magistrate's Court.

[2] Mr SF Ferreira, Senior Magistrate (Welkom) in a letter attached to the special review, briefly set out the following summary of the relevant circumstances and facts:

“The accused was charged with contravening section 49(1)(a) of Act 13 of 2002- Illegal Foreigner.

The accused person was legally represented.

The accused was sentenced to a Fine of R 1000 or 3 months imprisonment.

In terms of section 103 (2) of Act 60 of 2000 the accused was declared unfit to possess a firearm.

The clerk of court had also informed the Registrar of the Firearms Registry Centre of the magistrates order declaring the accused unfit to possess a firearm.

It is respectfully submitted that the provisions of section 103 of the Firearms Control Act, Act 60 of 2000 is not applicable in this instance. Section 103(1)(a) – 103(1)(o) as well as section 103(2) with reference to Schedule 2 does not warrant an enquiry into the competency of a person to possess a firearm.

Therefore the order must be declared ultra vires.

The magistrate was requested to comment of the writers view but declined to do so.”

[3] Having read the record of the transcriptions together with the supporting documentation attached thereto, I am in agreement with Mr Ferreira’s view that the presiding magistrate acted ultra vires in declaring the accused unfit to possess a firearm in terms of section 103(2) of the Firearms Control Act, 60 of 2000. The offence of which the accused had been found guilty is not an offence/crime referred to in Schedule 2, and therefore it follows that the offence falls without the scope and ambit of declaring the accused unfit to possess a firearm.

[4] Consequently the following order is made:

- 4.1 The conviction and sentence are confirmed.
- 4.2 The declaration in terms of Section 103(2) of the Firearms Control Act, 60 of 2000, is set aside.
- 4.3 The Senior Administration Officer (Magistrate Court: Welkom) is ordered to forthwith inform the Registrar: Firearms Registry Centre (Pretoria) of the order in terms of paragraph 4.2 above.

C. REINDERS, AJ

I concur:

C. VAN ZYL, J