

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

Review Number: 82/2015

In the review between:-

THE STATE

and

LUCKY ALFRED MADIMABE (RAMOCHELA)

CORAM: VAN ZYL, J *et* NAIDOO, J

JUDGMENT BY: VAN ZYL, J

DELIVERED ON: 18 SEPTEMBER 2015

[1] The accused was convicted on three charges of housebreaking with the intent to steal and theft. He was then sentenced as follows:

"3 (three) imprisonment or R4 000,00 (four thousand rand) fine, half of suspended for a period of 5 (five) years, on condition that the accused is not convicted of housebreaking with intent to steal or theft, committed during the period of suspension. No order is made in terms of section 103(1) Act 60 of 2000" (*sic*)

[2] The matter then served before Ebrahim, J on review. She raised the following query:

"The sentence imposed is not clear and makes no sense."

- [3] The matter thereafter served before me. The presiding acting magistrate duly responded to the aforesaid query by conceding that the wording of the sentence does not read properly and suggested an alternative formulation thereof.
- [4] However, from my perusal of the record it became evident that the record was incomplete. I then raised the following query:
- "1. Although my colleague Ebrahim, J raised a query regarding the sentence, this matter was referred to me as the recess duty Judge. I have received the response regarding the sentence, thank you. Unfortunately I have additional problems with this matter.
 2. The record is totally incomplete. The record starts with the introduction stating that it is a partly heard matter, with record of the evidence previously presented. From a reading of the address by the prosecutor and the judgment, it seems that the record is lacking the evidence of the following witnesses:
 - 2.1 Zamaia Ntsitungsa
 - 2.2 Mamsi Mosala
 - 2.3 Afordia Adams
 - 2.4 Matthys Botha Nel
 3. Please rectify/restructure the record to reflect the totality of the proceedings."
- [5] The matter subsequently served before me again, this time with a complete record of the proceedings. I have perused

the said record and am satisfied that the convictions and the substance of the imposed sentence are in accordance with justice. However, it is necessary for the formulation of the sentence to be rectified.

[6] The following order is consequently made:

1. The convictions of the accused are confirmed.
2. The imposed sentence is set aside and substituted by the following:

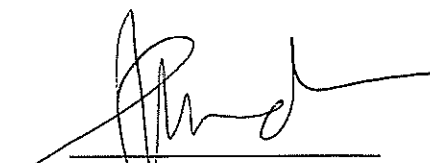
“Sentenced to R4 000,00 (four thousand rand) or 3 (three) years imprisonment, half of which is suspended for 5 (five) years on condition that the accused is not convicted of housebreaking with the intent to steal and theft, or theft committed during the period of suspension.

No order is made in terms of section 103(1) of Act 60 of 2000.”

3. The aforesaid sentence is to be considered to have been imposed on 29 April 2015.


C. VAN ZYL, J

I concur.


S. NAIDOO, J