

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No. : 444/2012

THE STATE

versus

KHIBA PHINEUS MOFO

CORAM: RAMPAL, J *et* MOLEMELA, J

JUDGMENT BY: RAMPAL, J

DELIVERED ON: 7 MARCH 2013

- [1] These were review proceedings. The accused was found guilty of stock theft in contravention of section 11 Stock Theft Act 57 of 1959 read together with other related provisions. He was convicted on his plea. On the same day, 3 June 2012, he was sentenced to 12 (twelve) months imprisonment. Moreover, the district court magistrate declared him unfit to possess a firearm.
- [2] The sentence imposed on the accused was subject to review in the ordinary course. On 29 January 2012 I caused a query to be sent to the district magistrate. The thrust of the query was to ascertain, firstly, whether the provisions of section 103 Firearms Control Act 60 of 2000 were explained to the accused and secondly, whether the accused was afforded an opportunity of making

submissions, if any, as to why he should not be declared unfit to possess a firearm.

[3] Section 103(2) Act No 60 of 2000 provides:

“(2) (a) A court which convicts a person of a crime or offence referred to in Schedule 2 and which is not a crime or offence contemplated in subsection (1), **must enquire and determine whether that person is unfit to possess a firearm.**

(b) If a court, acting in terms of paragraph (a), determines that a person is unfit to possess a firearm, it must make a declaration to that effect.”

[4] In his response dated 30 January 2013, which the registrar received about five weeks later on 5 March 2013, the district magistrate conceded, firstly, that the provisions of the section were not explained to the accused, and secondly, that the accused was not invited, before the adverse order was made, to make any input concerning his fitness or otherwise to possess a firearm.

[5] The court was obliged to hold an inquiry in terms of subsection 2(a) in order to determine whether the convicted accused was fit or unfit to possess a firearm. However, no inquiry was held. The section contemplates some quasi-judicial inquiry. Naturally an inquiry envisages the hearing of two sides of a story. The magistrate did not appreciate that he was obliged to do so. It follows, therefore, that the accused was arbitrarily disqualified from possessing a firearm. An arbitrary court order does not accord well with considerations of public policy.

[6] In the circumstances I am inclined to accede to the magistrate's request that the order he purportedly made in terms of section 103(2) falls to be set aside. I would, therefore, nullify the arbitrary order. See **S v Mofokeng** 2013 (1) SACR 143 (FB) per Snellenburg AJ.

[7] Accordingly I make the following order:

7.1 The conviction and sentence are confirmed.

7.2 The order made in terms of section 103(2) Firearms Control Act 60 of 2000 by the district court magistrate at Wepener on 8 June 2012 whereby the accused was declared unfit to possess a firearm is hereby nullified and set aside.

M. H.RAMPAI, J

I concur.

M.B. MOLEMELA, J