

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No. : 96/2012

In the review between:-

THE STATE

versus

SETA MTHUTHUZELI HUHU

CORAM: JORDAAN, J *et* FISCHER, AJ

JUDGMENT BY: FISCHER, AJ

DELIVERED ON: 16 MAY 2013

[1] The accused herein, one Seta Mthuthuzeli Huhu, was charged and subsequently convicted in the Magistrates' Court for the district of Bloemfontein on 12 February 2013 of the offences of assault with intent to do grievous bodily harm as well as malicious injury to property.

[2] For purposes of sentencing both charges were taken together and the following sentence imposed:

“Two (2) years imprisonment wholly suspended for five (5) years on the following conditions:

- i) That the accused is not convicted of assault with intent to do grievous bodily harm or malicious injury to property committed during the period of suspension.

- ii) That the accused compensate the complainant in terms of section 300 of the Criminal Procedure Act 51 of 1977 in the amount of R1300 (One Thousand Three Hundred Rand). Such amount is payable in monthly instalments of R200 (two hundred) and one instalment of R100 (one hundred rand) at Clerk of The Court, Magistrates Court Bloemfontein. The first instalment is payable on or before 7 March 2013 with the remaining instalments on or before the 7th day of each succeeding month until such amount is paid in full.

In terms of section 103(1) of Act 60 of 2000, accused is deemed unfit to possess a firearm.”

- [3] This matter has come before us as a special review in terms of section 304(4) of the Criminal Procedure Act, No 51 of 1977, as the acting regional court magistrate who presided in the matter, brought our attention to the need to rectify the sentence imposed especially insofar as it had regard to section 300 of the Criminal Procedure Act 51 of 1977, as it was at all material times the intention of the presiding acting regional magistrate to grant a compensation order as part of the conditions of the suspended sentence as contemplated in terms of 297 of the Criminal Procedure Act 51 of 1977 and not section 300.
- [4] The important distinction to be drawn between sections 297 and 300 of the aforementioned Act was succinctly dealt with by Claassen J in **S v Khoza** 2011 (1) SACR 482 (GSJ) at [8] where he highlighted in what manner a court can secure compensation to a complainant who, on account of the conduct of the accused, had suffered loss or damage to

property. At paras [9] and [10] the following observations were made:

“An order in terms of section 300 of the Act would only be appropriate where the accused has sufficient property or executable assets to compensate the complainant in full, or to a large extent. Where an accused is unable to compensate the complainant in full, an order in terms of this section should not be made. If an accused is employed and able to repay in instalments, it would be more appropriate and practical to impose a sentence suspended on condition of periodical payments... Compensation as a condition of a suspended sentence is too often not considered. A condition of suspension is more flexible, as it can be judicially adapted in the case of failure to pay, without the complainant having to incur the costs and bother of execution. Therefore courts should rather make use of section 297 opportunities to impose compensation as a suspension condition of the sentence.”

- [5] The court *a quo*, on a reading of the record, quite clearly had in mind to grant a compensation order, as envisaged in terms of section 297 of aforementioned Act and not section 300, as it subsequently did. What was furthermore quite clear is that the accused was employed and able to repay the compensation order in instalments and that, having regard to the particular circumstances of the case, such an order would have been more appropriate and practical than an order in terms of section 300. The accused was never able to compensate the complainant in full as he did not have sufficient or executable assets to achieve such an objective.

[6] I am satisfied with the conviction and accordingly intend amending the sentence so as to incorporate the correct reference to the appropriate section of the Criminal Procedure Act 51 of 1977.

[7] The following order is accordingly made:

1. The sentence imposed is altered to read as follows with specific reference to condition (ii) which is now to read as follows:

“(ii) That the accused compensate the complainant in terms of section 297(1)(a)(i)(aa) of the Criminal Procedure Act 51 of 1977 in the amount of R1 300,00 (one thousand three hundred rand). Such amount is payable in monthly instalments of R200,00 (two hundred rand) and one instalment of R100,00 (one hundred rand) at the Clerk of the Court, Magistrates Court, Bloemfontein. The first instalment is payable on or before 7 March 2013 with the remaining instalments on or before the 7th day of each succeeding month until such amount is paid in full.”

P.U. FISCHER, AJ

I concur.

A.F. JORDAAN, J

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