

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No: 211/2013

In the matter between:

THE STATE

and

KABI MAINE
MOTSEKI MOLISE
THANKISO MOLISE
MATSHPALE LETSIELO

JUDGMENT BY: JORDAAN, J *et* THAMAGE, AJ

DELIVERED ON: 22 AUGUST 2013

[1] This matter has been referred to this court as a special review in terms of section 304(4) of the Criminal Procedure Act no 51 of 1977. Although only the court file in respect of S v Khabi Maine has been made available to this court, it appears that all four cases are similar in all material respects and what applies to this matter applies to all four of them.

[2] In all the abovementioned matters the accused were charged with contravention of section 5(b) of Act 140 of 1992 (dealing

in drugs) being count 1. They were also charged with another count concerning illegal immigrants which is not relevant for the purposes of this matter.

[3] In all four matters the trial court decided to act in terms of section 112(1)(a) of the Criminal Procedure Act and convicted the accused without further ado. Specifically, the court did not apply the provisions of subsection (b) of the aforesaid section of the Act.

[4] The accused Kabi Maine was sentenced on the first charge (count 1) to a fine of R500,00 or 50 days imprisonment and in addition 4 months imprisonment wholly suspended for 3 years on appropriate conditions.

[6] After the aforesaid convictions and sentences, the magistrate realised that the sentences imposed are in excess of the sentences applicable to proceedings in terms of subsection (a) of section 112(1) and remitted the matter to this court for special review. This is because the additional 3 months imprisonment, although suspended, constitutes an order of

direct imprisonment without the option of a fine in conflict with the prescripts of subsection (a) of the aforesaid section of the CPA.

[7] On the other hand, the prescripts of section 17(e) of Act 140 of 1992 requires direct imprisonment to be imposed, although it can be suspended in the whole.

[8] The learned magistrate correctly points out that, in view of the aforesaid, the conviction and sentences are not in accordance with law and must be set aside.

[9] In view of the aforesaid the following orders are granted:

9.1 The conviction and sentences in respect of count 1 in all four matters are set aside.

9.2 The matters are remitted to the trial court to act in accordance with this judgment and the prescripts of section 112(1)(b) of the Criminal Procedure Act no 51 of 1977.

A. F. JORDAAN, J

I concur.

S. J. THAMAGE, AJ

eb/