

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

2/3/2012

Aug/2012

MAGISTRATE: ET MASHILE
POLOKWANE

High Court Reference No. 158
Magistrate serial No. 1/12
Review Case No. DC2195/10

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

2012 02 28
DATE

Et Mashile
SIGNATURE

THE STATE vs DAVID MASOGA KGANYAGO

REVIEW JUDGMENT

MAKGOKA, J:

[1] The accused, a 62 year old man, was convicted of two counts of fraud in the magistrate court, Polokwane. The conviction is in order. The sentence reads:

“Three years imprisonment of which two years imprisonment is suspended for a period of five years on condition that you are not convicted of fraud or “faugering” (sic) and uttering false document committed during the period of suspension.

[2] The learned magistrate has sent the record of proceedings to this court on special review in terms of s304(4) of the Criminal Procedure Act which provides:

"If in any criminal case in which a magistrate's court has imposed a sentence which is not subject to review in the ordinary course in terms of section 302 or in which a regional court has imposed any sentence, it is brought to the notice of the provincial or local division having jurisdiction or any judge thereof that the proceedings in which the sentence was imposed were not in accordance with justice, such court or judge shall have the same power in respect of such proceedings as if the record thereof had been laid before such court or judge in terms of section 303 or this section".

[3] The basis for the learned magistrate's referral to this court is simply that the sentence is silent as regards the count to which is related since the accused had been convicted of two counts. He states that he had intended to take both counts as one for purposes of sentence and impose the same sentence that he did. In his pronouncement of the sentence, he inadvertently omitted to state that the two counts were taken as one for the purpose of sentence. Apart from this omission, the proceedings appear to be in accordance with justice.

[4] He therefore requested that the sentence be rectified in that respect. I agree.

[5] In the result the conviction is confirmed. The sentence imposed by the learned magistrate is set aside and substituted with the following:

"Both counts are taken as one for purposes of sentence: 3 (three) year's imprisonment of which 2 (two) years are suspended for 5 (five) years on condition that the accused is not convicted of fraud or forgery and uttering a forged document, committed during the period of suspension. No order is made in terms of section 103 of Act 60 of 2000".



TM MAKGOKA

JUDGE OF THE HIGH COURT

I agree



N KOLLAPEN

JUDGE OF THE HIGH COURT