

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : P38/12

In the matter between:-

THE STATE

Petitioner

and

CARLWICK MOHAU LETHOKO

Respondent

CORAM:

RAMPAL, AJP *et* PHALATSI, AJ

JUDGMENT BY:

PHALATSI, AJ

DELIVERED ON:

1 MARCH 2012

[1] This is a petition filed against the order of the magistrate in the regional court for the division of the Free State, held at Odendaalsrus, refusing leave to appeal to this court.

[2] On the 28th of March 2006, under case number SCH 56/2004, in the regional court at Odendaalsrus, the petitioner was convicted on 14 counts of fraud and after all 14 counts were taken together for the purposes of sentence, he was

sentenced to 8 (eight) years imprisonment, 5 (five) years of which were suspended for a period of 5 (five) years, on condition that the petitioner was not found guilty of fraud or theft, or attempt thereto, committed during the period of suspension.

- [3] On 1 February 2011, the petitioner was again convicted on five counts of fraud and sentenced to imprisonment of 2 (two) years on each count, in the district court of Welkom, under case number A756/2010.
- [4] On 24 June 2011, the State brought an application that the 5 (five) years suspended sentence imposed on the petitioner on 28 March 2006, be brought into operation, as the petitioner was convicted of fraud on 1 February 2011 during period of suspension, being within the 5 (five) year period from the date of sentence.
- [5] Mr. Bothma, appearing on behalf of the petitioner, conceded that the defence did not have objection against the bringing into operation of the suspended sentence, but requested the court to make an order that the 5 (five) years sentence

should run concurrently with the sentence imposed on the petitioner on 1 February 2011.

[6] The State requested the court not to order that the two sentences should run concurrently.

[7] The court then made an order that the suspended sentence of 5 (five) years imprisonment imposed on the 28th of March 2006, come into operation on the day of the order, being 24 June 2011.

[8] The petitioner, aggrieved by this order, applied for leave to appeal against the said order.

[9] On 19 October 2011, the court refused to grant leave to appeal and advised that the petitioner was free to petition the Judge President of this court, to grant him leave to appeal.

[10] The petitioner apparently accepted this advice and brought the present petition.

[11] Now, it is necessary to explore what is the effect of the order that is sought to be appealed against.

[12] As stated, the petitioner requested that the said suspended sentence should run concurrently with the sentence imposed on 1 February 2011, which cumulatively amounts to 10 (ten) years imprisonment.

[13] That sentence started to run on 1 February 2011.

[14] The 5 (five) years suspended sentence started to run on 24 June 2011.

[15] It is clear that the suspended sentence started to run concurrently with the sentence imposed on 1 February 2011, on the date on which it was imposed, being 24 June 2011.

[16] This means that the court granted the petitioner what he prayed for, and, it was therefore not necessary that the said order be appealed against.

[17] The refusal of the application for leave to appeal by the

magistrate was therefore, for all practical purposes, of no force and effect.

[18] In the light of the above, it is clear that this petition was unnecessary.

[19] I therefore make the following order:

“The petition is struck from the roll.”

N.W. PHALATSI, AJ

I concur.

M.H. RAMPAL, AJP

/sp