

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No. : 86/2011

In the review between:

THE STATE

versus

TEBOHO DAVID SEFADI

First Accused

BONGANI QEKE

Second Accused

SOLOMON MASIJANE

Third Accused

CORAM:

MOCUMIE *et* MOLOI, JJ

JUDGMENT BY:

MOLOI, J

DELIVERED ON:

10 MARCH 2011

REVIEW JUDGMENT

MOLOI, J

- [1] This matter emanates from the Magistrate, Welkom. It was referred to this Court to correct a defect done by the presiding magistrate who imposed a sentence in excess of the prescribed sentence prescribed by the Trespass Act, No. 6 of 1959.

[2] The three accused pleaded guilty and were duly convicted of contravening the provisions of section 1(1)(a) of The Trespass Act, No. 6 of 1959, in that they unlawfully entered the grounds of President Steyn Gold Plant in Welkom without the permission of the lawful occupier. The presiding officer sentenced each of them to 3 (three) years imprisonment conditionally suspended for 5 (five) years.

[3] Section 2 of the said Act provides as follows:

“Any person convicted of an offence under section 1 shall be liable to a fine not exceeding R2 000-00 or imprisonment for a period not exceeding two years or to both such fine and such imprisonment.”

[4] The presiding magistrate referred to matter for review and stated:

“I humbly apply to the Honourable Judge to amend my sentence from three years imprisonment to two years imprisonment, and the rest may remain the same.”

[5] The sentence of three years imprisonment is clearly not in

accordance with justice being above the sentence prescribed by law. In the circumstances the sentence of three years imprisonment is set aside and substituted for the following sentence:

“Two years imprisonment wholly suspended for a period of 5 (five) years on condition that each accused is not found guilty of contravention of section 1(1)(a) of The Trespass Act, No. 6 of 1959, being on mine premises or property without the permission of the lawful occupier, committed during the period of suspension.”

The above sentence is pre-dated to 8 February 2011.

MOLOI, J

I concur.

MOCUMIE, J

/sp