

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No.: 133/2011

In the review between:

THE STATE

and

BENJAMIN MONGEZI NGALO

CORAM: VAN DER MERWE, J *et C* J MUSI, J

JUDGMENT: VAN DER MERWE, J

DELIVERED ON: 21 APRIL 2011

[1] This is a special review with a request by the trial magistrate that a conviction and sentence be set aside.

[2] The accused was charged with three counts. In terms of count one the accused was charged with a contravention of section 82 of the Third General Law Amendment Act 129 of 1993, in that on or about 7 January 2009 and at or near Bloemfontein the accused was in the possession of Allen keys. In count 2 it was alleged that on or about 27 March

2009 and at St Andrew Street, Bloemfontein the accused broke open a motor vehicle and stole a briefcase. Count 3 alleged a contravention of section 36 of the General Law Amendment Act, no 62 of 1955 committed on or about 5 October 2007 at or near Hanger Street, Bloemfontein in respect of possession of a tyre.

[3] After the State's case was closed, the accused was discharged in terms of section 174 of the Criminal Procedure Act on both counts 1 and 3. This took place on 30 November 2010. The accused then testified in his own defence in respect of count 2 only.

[4] Despite this, on 3 December 2010, the magistrate convicted the accused of theft as charged on count 2, as well as of contravention of section 82 of Act no 129 of 1993 in respect of possession of an Allen key in relation to the breaking open of the motor vehicle referred to in count 2. The accused was then also separately sentenced in respect of both the theft and the contravention of section 82 of Act no 129 of 1993.

[5] The conviction of theft on count 2 as charged and the

sentence imposed in respect thereof is in accordance with justice. The conviction of contravention of section 82 of Act no 129 of 1993 is a glaring and unexplained error that must be corrected by setting aside the conviction and the sentence imposed in respect thereof.

- [6] The conviction and sentence in respect of count 2 as charged, are confirmed but the conviction and sentence in respect of the contravention of section 82 of Act no 129 of 1993 are set aside.

C. H. G. VAN DER MERWE, J

I concur.

C. J. MUSI, J