

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No.: 408/2011

In the special review case between:

THE STATE

and

KABELO PAULO KANETSI
DAVID SITHOLE

CORAM: JORDAAN, J *et* ZIETSMAN, AJ

JUDGMENT BY: ZIETSMAN, AJ

DELIVERED ON: 1 DECEMBER 2011

[1] The accused pleaded guilty and was found guilty on 2 charges of contravention of section 4(3) read with section 1, 4, 20(1)(a), 20(3) and 21 of the Precious Metals Act, Act no 37 of 2005 as amended.

[2] Thereafter and during address by the attorney for the accused for mitigating circumstances and before sentence, the magistrate found out that there was a splitting of charges

and that the accused should have been only found guilty on 1 charge of contravention of section 4(c) of the Precious Metals Act, Act no 37 of 2005 as amended.

[3] The magistrate remarks as follows:

“When these two charges were put to the accused to plead I was under the impression that accused was found with the said gold bearing metal on the very same day but different places and at different times. Then it during the address by the attorney that accused was found at the very same time and date in possession of two plastic bags containing gold bearing material. I then immediately stopped the proceedings and realised that there is a duplication of charges after applying the “evidence test”.”

[4] It is obviously, so that there was a duplication of charges and that the accused is only guilty of one charge of contravention of section 4(c) as refer to above.

[5] In the light of the foregoing, the conviction on both the

counts is set aside and the matter is referred back to the magistrate of Welkom to deal with the matter accordingly.

P. ZIETSMAN, AJ

I concur.

A. F. JORDAAN, J

/eb