

IN THE HIGH COURT OF SOUTH AFRICA
[TRANSVAAL PROVINCIAL DIVISION]

REVIEW CASE NUMBER 53/08/NPM
A147/09

In the matter between:

THE STATE

AND

NICOLAAS JACOBUS LOMBAARD

RESPONDENT

REVIEW
JUDGEMENT

MAKGOKA AJ

The accused, a 46 year old male, was charged in the Magistrate Court, Wolmaranstad, with contravention of section 39(l)(j), read with sections 1, 12, 39(2) and 40 of the Arms Ammunition Act, 75 of 1969 ("the Act").

He pleaded guilty to the charge and he was convicted accordingly. He was sentenced to a fine of R900.00 or 3 months imprisonment, wholly suspended for a period of five years on condition that he is not convicted of contravening section 39(l)(j) or 39(l)(k) of the Act, committed during the period of suspension.

What transpired during the trial is that the magistrate omitted to make the accused aware of the provisions of section 12(1) of the Act, namely that upon conviction, the accused was deemed to be unfit to possess a firearm, unless after a proper enquiry, the court decides otherwise.

The magistrate therefore referred the matter to this court in terms of section 304(4) of Act 51 of 1977, as a special review with the following questions for determination:

- (a) is the accused properly deemed to be declared unfit to possess a fire-arm in terms of the Act⁹
- (b) if not, would it accord with justice to recall the accused for the purpose of holding an enquiry in terms of section 12(1) of the Act?

Upon receipt of the review, I referred the questions to the Director of Public Prosecutions with the following questions:

- (a) is the magistrate *functus officio*?
- (b) if not, can the magistrate proceed to conduct an enquiry into the fitness of the accused to possess a fire-arm?

The Senior State Advocate, Advocate Marriott, with whom Advocate HE van Jaarsveld agrees, is of the view that the magistrate is not *functus officio* before the enquiry in terms of section 12 of the Act has been concluded.

Advocate Marriott is therefore of the view that the matter be remitted to the magistrate for compliance with the provisions of the Act. I agree and intend doing so.

In the premises I make the following order:

- 8.1 the conviction and sentence are confirmed.
- 8.2 the matter is remitted to the magistrate for holding of an enquiry terms of section 12(1) of the Arms and Ammunition Act, 75 of 1969.

TM MAKGOKA
ACTING JUDGE OF THE HIGH
COURT, PRETORIA

I agree and it is so ordered

MF EEGODI
JUDGE OF THE HIGH COURT,
PRETORIA