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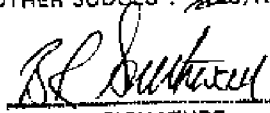
A 438/09

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH AND SOUTH GAUTENG HIGH COURT, PRETORIA)**

Date: 11/6/2009

High Court Ref No.: 83
Magistrate's Serial No.: 65/08
Case No.: M230/08

MAGISTRATE
NSIKAZI (held at MATSULU)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE :	YES /NO
(2) OF INTEREST TO OTHER JUDGES :	YES /NO
(3) REVISED	
DATE 25-8-09	 SIGNATURE

THE STATE V BONGANI MHLANGA

REVIEW JUDGMENT

SOUTHWOOD J

[1] On 7 August 2008 the accused was found guilty of theft (of Telkom cable) in the Kabokweni magistrates' court and sentenced to 2 years imprisonment. In answer to the reviewing judge's query as to why he did not suspend part of the sentence the presiding magistrate stated –

'The reason for the sentence is that the crime of theft of Escom cable in the district of Nsikazi is very rife and highly inconveniencing to the community and the rendering of the essential services in the area. The value of the

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cable is R2 600, 00 but the inconvenienced that has been caused by the cutting and stealing of that cable is very high. The court felt that under the circumstances two years direct imprisonment was an appropriate sentence.²

- [2] The Director of Public Prosecutions does not support the sentence which he considers to be disturbingly inappropriate in the circumstances. The Director of Public Prosecutions considers that the appropriate sentence was 2 years imprisonment with half suspended on appropriate conditions. I agree.
- [3] While the theft of Telkom cables is very prevalent and causes severe disruption and inconvenience the presiding magistrate unduly emphasised these factors and did not sufficiently take into account the relative youthfulness of the accused and the fact that he is a first offender. The sentence should have been properly balanced to punish and deter the accused by suspension of a part of the sentence.
- [4] The following order is made:
- I The conviction is confirmed;
 - II The sentence is set aside and substituted with a sentence of 2 (two) years imprisonment, half suspended for 5 (five) years on condition that the accused is not again found guilty of theft committed during the period of suspension.
 - III In terms of section 282 of Act 51 of 1977 the substituted sentence is deemed

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to have been imposed on 7 August 2008.

I agree


B.R. SOUTHWOOD
JUDGE OF THE HIGH COURT


C. PRETORIUS
JUDGE OF THE HIGH COURT