

ME

A 539/2009

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT: PRETORIA)

22/6/09

DATE.: 17 June 2009

Magistrate
MANKWENG

Case No.: A803/2008
High Court Ref No.:605
Magistrate's Serial No: 09/2009

THE STATE VS SAMUEL RAPHELA

REVIEW JUDGMENT

SERITI, J.:

The accused appeared before the Magistrate's Court, Mankweng, facing one charge of housebreaking with intent to steal and theft.

Accused, who conducted his own trial, pleaded not guilty but after evidence was led, he was convicted as charged.

After his conviction, the trial Court imposed the following sentence:

"R3000-00 (three thousand rand) or 4 (four) months imprisonment, a further R3000-00 (three thousand rand) or 4 (four) months imprisonment is wholly suspended for 3 (three) years on condition that accused is not found guilty of an offence involving housebreaking with intent to steal and theft during the period of suspension"

When the matter came on review for the first time, my colleague Legodi J sent a query to the Magistrate enquiring if the manner in which the sentence is phrased is not confusing and secondly if the condition of suspension of part of the sentence is not properly set out.

The Magistrate replied and stated that the sentence as formulated is not confusing but conceded that the suspended portion of the sentence needs to be corrected as there is "an omission on my part and the mistake is highly regretted".

I do not share the views of the Magistrate on the first question raised by Legodi J. The sentence as formulated is not as clear as it should be. It must be stated in such a manner that there should be no room for misunderstanding. The suspended portion of the sentence also needs to be corrected, as the Magistrate, correctly so, conceded that same is not properly articulated.

I therefore make the following order:

1. The sentence imposed on the accused is set aside and is substituted with the following:
2. R6000-00 (six thousand rand) fine or 8 (eight) months imprisonment, R3000-00 (three thousand rand) or 4 (four) months of which are suspended for a period of 3 (three) years on condition that the accused is not found guilty of housebreaking with intent to steal and theft committed during the period of suspension.



W SERITI
JUDGE OF THE HIGH COURT

I agree



M.F LEGODI
JUDGE OF THE HIGH COURT