

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Review No. : 170/08

In the review between:-

THE STATE

versus

LEFA TSOELIANE

JUDGMENT BY: C.J. MUSI, J

DELIVERED ON: 4 APRIL 2008

[1] This matter was sent on special review by the magistrate, Bloemfontein. The accused was convicted of contravening section 5(b) of Act 140 of 1992 (Dealing in dagga). He was sentenced as follows:

“R4000,00 (four thousand rand) or 2 (two) years of which R2000,00 (two thousand rand) or 1 (one) year imprisonment is suspended for a period of 3 (three) years on condition accused is not again convicted of section 5(b) Act 140/1992, Dealing in drugs, committed during period of suspension.”

[2] The magistrate correctly points out that he imposed an

incompetent sentence. See **S v MOSOLOTSANE** 1993 (1) SASV 502 (O) at 503 e – h. The sentence ought to be set aside.

[3] The accused's legal representative addressed the magistrate in mitigation of sentence. That part of the record is not transcribed. The matter must be referred back to the magistrate, as per his request, so that he could impose a competent sentence.

[4] Consequently the following order is made:

- a) The conviction is confirmed.**
- b) The sentence is set aside and the matter is remitted to the magistrate so that he could impose a suitable sentence.**

C.J. MUSI, J