

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

Review No. : 296/08

In the review between:-

THE STATE

versus

NCEBA NKAZANE

CORAM: BECKLEY, J *et* MABESELE, AJ

JUDGMENT: BECKLEY, J

DELIVERED ON: 4 SEPTEMBER 2008

[1] The accused in this matter was charged with a contravention of section 1(1) of Act No. 6 of 1959. He pleaded guilty and was consequently convicted of the offence, commonly known as trespassing. Having been convicted, the accused was sentenced to imprisonment for a period of 28 (twenty eight) months, which imprisonment was wholly suspended for a period of 5 (five) years on condition that the accused is not convicted of contravention of section 1 of Act No. 6 of 1959 committed during the period of suspension.

[2] After the sentence had been imposed, the magistrate realised that the sentence imposed is incompetent as section 2 of Act No. 6 of 1959 provides that any person convicted of an offence under section 1 thereof, shall be liable to a fine not exceeding R2 000,00 or to imprisonment for a period not exceeding 2 (two) years or both such fine and such imprisonment. It is clear that the sentence imposed, namely one of 28 (twenty eight) months, exceeds the maximum sentence determined in terms of the relevant provisions of the Act. The magistrate has therefore requested that the sentence be set aside and replaced with a sentence of 24 (twenty four) months, wholly suspended in the same conditions as the current sentence.

[3] It is clear that the sentence must therefore be set aside and it is in the interest of justice that this Court imposes a sentence afresh, instead of referring the matter back to the trial magistrate.

[4] The magistrate has suggested that the sentence of 28 (twenty eight) months imprisonment be set aside and replaced with one of 24 (twenty four) months imprisonment,

being the maximum term of imprisonment prescribed in the relevant legislation. I cannot, unfortunately, accede to that request, having regard to the fact that the 24 (twenty four) months as proposed by the magistrate is the maximum term of imprisonment. It is clear that he is a first offender and, moreover, pleaded guilty to the offence. In the circumstances a period of imprisonment of 12 (twelve) months wholly suspended for a period of 5 (five) years, would be appropriate.

- [5] In the result the conviction is confirmed but the sentence is set aside and replaced with a sentence of 12 (twelve) months imprisonment wholly suspended for 5 (five) years on condition that the accused is not convicted of contravention of section 1 of Act No. 6 of 1959, committed during the period of suspension.

A.P. BECKLEY, J

I concur.

M.M. MABESELE, AJ

/sp